1–31–06 Tuesday
Vol. 71 No. 20 Jan. 31, 2006

Pages 4975–5154

Federal Register

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How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

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WHEN: Tuesday, February 7, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Rules and Regulations

Federal Register

Vol. 71, No. 20

Tuesday, January 31, 2006

FEDERAL ELECTION COMMISSION

11 CFR Parts 109 and 300

[Notice 2006–1]

Definitions of ''Agent'' for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Revised Explanation and Justification.

SUMMARY: The Federal Election Commission is publishing a revised Explanation and Justification for its definitions of ''agent'' in its regulations on coordinated and independent expenditures, and non-Federal funds, which are commonly referred to as ''soft money.'' The regulations, which are being retained, implement the Bipartisan Campaign Reform Act of 2002 by defining ''agent'' as ''any person who has actual authority, either express or implied'' to perform certain actions. These definitions do not include persons acting only with apparent authority. These revisions to the Explanation and Justification are in response to the decision of the U.S. District Court for the District of Columbia in *Shays* v. *FEC.* Further information is provided in the supplementary information that follows.

DATES: Effective date is January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Ron B. Katwan, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (2002) (''BCRA'') amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act''). In 2002, the Commission promulgated regulations in order to implement BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds. *Final Rules and Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,* 67 FR 49064 (July 29, 2002) (''*Soft Money Final Rules*''). The Commission also approved final rules implementing BCRA's provisions regarding payments by political committees and other persons for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee, as well as other expenditures that are made either in coordination with, or independently from, candidates and political party committees. *Final Rules and Explanation and Justification for Coordinated and Independent Expenditures,* 68 FR 421 (Jan. 3, 2003) (''*Coordination Final Rules*'').

Many of BCRA's provisions and the regulations implementing BCRA apply not only to principals, such as candidates, political party committees, or other entities, but also to their agents. *See* 67 FR at 49081–82; 68 FR at 421–22. Before BCRA was enacted, the Commission's regulations at former 11 CFR 109.1(b)(5) (2001) defined ''agent'' only for purposes of establishing whether an expenditure made by an individual was made independent of a candidate or political party. The definition was limited to ''any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures, or [* * *] any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.'' The definition of ''agent'' at former section 109.1(b)(5) did not apply to any fundraising activities.

When implementing BCRA in 2002, the Commission did not seek comment on whether it should retain the pre-BCRA definition of ''agent.'' Rather, the Commission sought comment on whether a principal should be held liable if an agent has actual, as opposed to apparent, authority to engage in the alleged actions at issue, and whether a principal should be held liable only if an agent has express, rather than implied, authority to act. *See Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,* 67 FR 35654, 35658 (May 20, 2002). The Commission also sought comment on whether the term ''agent'' should be left undefined in the Commission's rules and interpreted instead based on common law principles of agency. *Id.*

The final rules adopted by the Commission in 2002 contained two identical definitions of ''agent'' for the regulations on coordinated and independent expenditures (11 CFR 109.3) and the soft money regulations (11 CFR 300.2(b)). Both rules defined ''agent'' as ''any person who has actual authority, either express or implied,'' to perform certain actions. The Commission decided to exclude from the BCRA rules defining ''agent'' those persons acting only with apparent authority. The 2002 BCRA rules sought to limit a principal's liability for the actions of an agent to situations where the principal had engaged in specific conduct to create an agent's authority. The Commission was concerned that by including apparent authority in the definitions of ''agent'' it would expose principals to liability based solely on the actions of a rogue or misguided volunteer and ''place the definition of 'agent' in the hands of a third party.'' *See Soft Money Final Rules,* 67 FR at 49083; *Coordination Final Rules,* 68 FR at 424–425. Accordingly, the Commission's BCRA definitions did not include the second part of the pre-BCRA definition, which had covered only limited aspects of apparent authority, specifically, apparent authority based on ''a position within the campaign organization.''

In 2004, the Commission's post-BCRA definitions of ''agent'' were reviewed by the U.S. District Court for the District of Columbia in *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004) (''*Shays*''), *aff'd,* 414 F.3d 76 (D.C. Cir. 2005) (*pet. for reh'g en banc denied* Oct. 21, 2005) (No. 04–5352). The District Court held that the Commission's decision not to include apparent authority within the definitions of ''agent'' was an acceptable and permissible construction of the term under the Act. *Shays at 84.* The court found that Congress had not directly spoken to the question at issue, satisfying the first step of *Chevron*

review.[1] *Id.* at 71, 84. The court determined that ''the Commission's construction of the term 'agent' is faithful to the literal terms of the statute.'' *Id.* at 71–72, 81–86 (finding that both definitions ''survive[] *Chevron* review''). Specifically, the District Court concluded, ''the term 'agent' is subject to different interpretations and the FEC's interpretation of the term complies with an acceptable interpretation of the statute.'' Id. at 84. The court emphasized that the *Shays* plaintiffs ''provide[d] no basis for the conclusion that the term 'agent' has developed a 'settled meaning under * * * the common law,' or that the meaning includes those acting with apparent authority.'' Id. at 83. The District Court noted, ''Black's Law Dictionary provides that the term in its normal parlance does *not* include those acting with apparent authority.'' *Id.* (emphasis added).[2] Accordingly, the court ''conclude[d] that the term 'agent' does not have a settled common law meaning that includes those acting with apparent authority.'' *Id.*

While upholding the Commission's definition under *Chevron,* the District Court found that the Commission's Explanation and Justification for the definitions of 'agent' at 11 CFR 109.3 and 300.2(b) did not satisfy the reasoned analysis requirement of the Administrative Procedure Act (''APA'') on three grounds. *See Shays* at 72, 88; *see also* 5 U.S.C. 553. First, the court found that the Commission had not adequately explained why it departed from its pre-BCRA definition of 'agent,' by not including the portion of the definition that covered certain applications of apparent authority. *Shays* at 87. Second, the court found that the Commission had not addressed the impact that its construction of the term ''agent'' might have on preventing circumvention of the Act's limitations and prohibitions and on preventing the appearance of corruption, two policies that Congress sought to advance in passing BCRA. *Id.* at 72, 87. Third, the court found that the Commission's main concern in excluding apparent authority from the definitions—namely, to prevent a candidate or political party committee from being held liable for the actions of a rogue or misguided volunteer who purports to act on behalf of the candidate or committee—was ''not supported by the law of agency * * *.'' *Id.* at 87.

The court remanded the definitions to the Commission for further action consistent with its opinion. *Id.* at 130. The Commission did not appeal this portion of the District Court decision.

In response to the *Shays* decision, the Commission issued a Notice of Proposed Rulemaking, which was published in the **Federal Register** on February 2, 2005. *Notice of Proposed Rulemaking on the Definitions of ''Agent'' for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures,* 70 FR 5382 (Feb. 2, 2005) (''NPRM''). The NPRM sought comment on several alternatives, which were (1) whether to continue to exclude apparent authority from its definitions of ''agent'' at 11 CFR 109.3 and 300.2(b); (2) whether to add apparent authority to these definitions; (3) whether to return to the pre-BCRA definition; and (4) whether to adopt a different definition of ''agent'' covering certain applications of apparent authority while excluding others. The comment period closed on March 4, 2005. The Commission received six written comments from eleven commenters on the proposed rules. Additionally, the Commission received a letter from the Internal Revenue Service indicating, ''the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.'' The Commission held a hearing on this rulemaking on May 17, 2005. Four commenters testified at the hearing. For purposes of this document, the terms ''comments'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.[3]

The commenters were divided between those who favored adding apparent authority to the definitions of ''agent'' and those who supported retention of the 2002 rule. The Commission has decided, after carefully weighing the relevant factors, including its extensive experience in investigating and prosecuting statutory violations, to retain the current definitions in 11 CFR 109.3 and 300.2(b) and to provide this revised Explanation and Justification for the decision to exclude apparent authority from these definitions. The Commission has decided that its current definitions of ''agent'': (1) As required by BCRA, cover individuals engaged in a broad range of activities specifically related to BCRA-regulated conduct, thereby dramatically increasing the number of individuals and type of conduct subject to the Act, especially when compared to the Commission's pre-BCRA definition of agent; (2) cover the wide range of activities prohibited by BCRA and the Act, thereby providing incentives for compliance, while protecting core political activity permitted by BCRA and affirmed by the U.S. Supreme Court in *McConnell*[4] that, under an apparent authority standard, could otherwise be restricted or subject to Commission investigation; and (3) are best suited for the political context, which is materially different from other contexts in which apparent authority is applicable.

Explanation and Justification

11 CFR 109.3 and 300.2(b)—Definitions

According to the common law definition of actual authority, as codified in the Restatement (Second) of Agency (1958) (''Restatement''), an agent's actual authority is created by manifestations of consent (express or implied) made by the principal *to the agent.*[5] Restatement 7. Apparent authority, by contrast, is the result of manifestations the principal makes *to a third party* about a person's authority to act on the principal's behalf. Restatement 8. Apparent authority is created where the principal's words or conduct ''reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.'' *Overnite Transp. Co.* v. *NLRB,* 140 F.3d 259, 266 (D.C. Cir. 1998) (quoting Restatement 27). Moreover, to have apparent authority ''the third person must not only believe that the individual acts on behalf of the principal but, in addition, 'either the *principal* must intend to cause the third party to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.' '' *Id.* (quoting Restatement 27, cmt. a) (emphasis added).

[1] The first step of the *Chevron* analysis, which courts use to review an agency's regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays* at 51–52 (citing *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council,* 467 U.S. 837, 842–43 (1984)).

[2] The court also noted that individuals with apparent authority ''are therefore not technically 'agents' with regard to the activity at issue; it is only by their actions and those of their 'principal' that they are deemed to act as agents for purposes of establishing liability.'' *Id.* at 84, citing Restatement (Second) of Agency 8, cmt. a.

[3] The written comments and a transcript of the hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml* under *Definition of Agent for BCRA Regulations on Coordinated and Independent Expenditures and Non-Federal Funds or Soft Money.*

[4] *See McConnell* v. *FEC,* 504 U.S. 93, 159–61 (2003).

[5] *See Kolstad* v. *American Dental Ass'n,* 527 U.S. 526, 542 (1999) (''The common law as codified in the Restatement (Second) of Agency (1957), provides a useful starting point for defining [the] general common law [of agency].'')

Finally, apparent authority may be created not only by manifestations the principal makes *directly* to a third party, but, in addition, ''as in the case of [actual] authority, apparent authority can be created by appointing a person to a position, such as that of manager or treasurer, which carries with it generally recognized duties; to those who know of the appointment there is apparent authority to do the things ordinarily entrusted to one occupying such a position, regardless of unknown limitations which are imposed upon the particular agent.'' Restatement 27, cmt. a.

The Supreme Court has emphasized that not every aspect of agency law needs to be incorporated into a Federal statute when it is not necessary to effectuate the statute's underlying purpose. *See, e.g., Faragher* v. *City of Boca Raton,* 524 U.S. 775, 803 n.3 (1998) (The ''obligation here is not to make a pronouncement of agency law in general or to transplant [the Restatement (Second) of Agency into a Federal Statute, but] is to adapt agency concepts to the [Statute's] practical objectives.''). In construing the term ''agent,'' the Commission believes that the current definitions of ''agent,'' which are based on actual authority, either express or implied, best effectuate the intent and purposes of BCRA and the Act.

The Commission's current definitions of ''agent': (1) As required by BCRA, cover individuals engaged in a broad range of activities specifically related to BCRA-regulated conduct, thereby dramatically increasing the number of individuals and types of conduct subject to the Act, especially when compared to the Commission's pre-BCRA definition of agent; (2) cover the wide range of activities prohibited by BCRA and the Act, thereby providing incentives for compliance, while protecting core political activity permitted by BCRA and affirmed by the U.S. Supreme Court in *McConnell* that, under an apparent authority standard, could otherwise be restricted or subject to Commission investigation; and (3) are best suited for the political context, which is materially different from other contexts in which apparent authority is applicable.

1. *As required by BCRA, the Commission's definitions of ''agent'' cover individuals engaged in a broad range of activities specifically related to BCRA-regulated conduct, thereby dramatically increasing the number of individuals and types of conduct subject to the Act, especially when compared to the Commission's pre-BCRA definition of agent.*

In implementing BCRA, the Commission adopted regulations that defined ''agent'' based on a broad range of activities specifically related to BCRA-regulated conduct, thereby dramatically increasing the number of individuals who met the definitions of an ''agent'' of a candidate, political party committee, or other political committee. The Commission's pre-BCRA independent expenditure rules limited the definitions of ''agent'' to ''any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures, or [* * *] any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.'' 11 CFR 109.1(b)(5)(2001).

Campaign committees typically authorize very few people to make expenditures, and typically limit those powers to employees under the campaign's direct control. The number of positions within a campaign organization where it would reasonably appear that a person could make expenditures is similarly limited. Therefore, the Commission's pre-BCRA definition of ''agent'' captured only a small number of individuals within a campaign organization. Moreover, by defining agency based on authority to make expenditures, the Commission's pre-BCRA definition did not restrict individuals involved in the solicitation and receipt of funds specifically prohibited by BCRA.

In enacting BCRA, Congress extended the scope of agency for purposes of the Act to include persons with the authority to solicit and receive funds, thereby increasing significantly the number of persons subject to the Act. Accordingly, the Commission's soft money regulations define ''agents'' as individuals with actual authority to solicit or receive funds. *See, e.g.*, 11 CFR 300.2(b)(1)(i) (''solicit, direct or receive funds'') and 300.2 (b)(3) (''solicit, receive, direct, transfer, or spend funds''). In contrast to the pre-BCRA rule, the current definition applies to the solicitation of funds generally, and is not limited to activities based on statutorily defined terms, such as expenditures or contributions. The number of individuals involved in fundraising for a campaign can reach hundreds and, in the case of presidential campaigns and national party committees, potentially thousands of individuals, most of whom are volunteers. Therefore, the number of individuals subject to the Commission's current definition of ''agent'' in the soft money regulations is far greater than the number of individuals who were subject to the pre-BCRA regulation, while the type of activity restricted is specifically related to BCRA-regulated conduct.

The Commission's current definition of ''agent'' in its coordination regulations defines agents as individuals with actual authority to request, make, or be materially involved with the production of certain types of communications. 11 CFR 109.3. In contrast to the pre-BCRA rule, this definition applies to a wide range of activities related to the creation and distribution of political communications, and is not limited to activities based on statutorily defined terms, such as expenditures or contributions. For example, the rule captures individuals who, on behalf of a Federal candidate, have actual authority, ''to provide material information to assist another person in the creation, production, or distribution of any communication.'' 11 CFR 109.3(b)(5). Therefore, the rule not only captures a much larger set of individuals than the pre-BCRA rule, but also captures the proper type of activity prohibited by the coordination regulations, *i.e.*, activities related to the production and distribution of communications.

After examining the Commission's pre- and post-BCRA enforcement record, the Commission has determined that the decision to limit agency to those with actual authority, express or implied, has not had a material impact on its ability to prosecute cases in the three years the rule has been in place. In the Commission's experience in administering and enforcing the Act since promulgating the current rules in 2002, excluding apparent authority from the definitions of ''agent'' has not facilitated circumvention of the Act nor led to actual or apparent corruption. Commenters both favoring and opposing the regulations in their current form agreed that there is no evidence that the operation of the current definitions of ''agent'' in the 2003–2004 election cycle in any way undermined the success of BCRA cited by its Congressional sponsors. When asked at the hearing whether the lack of apparent authority had led to circumvention of the Act, a representative of a major reform organization testified, ''I don't know of any specific situation.'' The Commission concurs with this conclusion.

In upholding the Commission's definitions of ''agent'' under *Chevron,* the District Court observed, ''it is not readily apparent that the regulation on its face creates the potential for gross abuse'' and ''in the end simply finds

Plaintiffs'' concerns [that the definitions would allow circumvention of the Act] to be too amorphous and speculative at this stage to mandate the reversal of the Commission's regulation.'' *Shays* at 85–86. The record evidence developed and reviewed in this rulemaking and the Commission's prosecutorial experience support the District Court's conclusion.

Nevertheless, if the Commission should encounter evidence of actual or apparent corruption or of circumvention of the Act in the future, the Commission has the authority to revisit the regulation and take action as appropriate, including an approach targeted to the specific problems that are actually found to occur.

2. *Actual authority, either express or implied, is a broad concept that covers the wide range of activities prohibited by BCRA and the Act, thereby providing appropriate incentives for compliance, while protecting core political activity permitted by BCRA and affirmed by the U.S. Supreme Court in McConnell that, under an apparent authority standard, could otherwise be restricted or subject to Commission investigation.*

Based on a careful review of the relevant factors, the Commission has found that inclusion of apparent authority in the Commission's definitions of ''agent'' is not necessary to implement BCRA or the Act, and that actual authority is sufficient to prevent circumvention and the appearance of corruption. In arguing for an apparent authority standard, some commenters erroneously stated that the Commission's current definitions of ''agent'' were too narrow because they failed to capture various hypotheticals involving allegedly prohibited activity. These hypotheticals included: (a) Actions by individuals with certain titles or positions within a campaign organization or party committee; (b) actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds; (c) actions by individuals acting under indirect signals from a candidate; and (d) actions by individuals who willfully kept a candidate, political party committee, or other political committee ignorant of their prohibited activity. As discussed further below, actual authority, either express or implied, sufficiently addresses this hypothetical behavior. Moreover, a principal's private instructions or indirect signals to agents, or a principal's attempts to keep himself ignorant of an agent's activities, do not implicate apparent authority, which involves manifestations by a principal to a third person rather than to the agent.

While the Commission's actual authority standard is sufficiently broad to address this activity, it also protects core political activity permitted by BCRA and affirmed by the U.S. Supreme Court in *McConnell* that, under an apparent authority standard, could otherwise be restricted or subject to Commission investigation. Therefore, the Commission's current definitions of ''agent'' best effectuate the intent and purpose of BCRA and the Act, and create the appropriate incentives for candidates, party committees, and other political committees to ensure that their employees and volunteers are familiar with, and comply with, BCRA's soft money and coordination provisions.

a. *Actions of individuals with certain titles or positions.* Apparent authority is not necessary to capture impermissible activity by persons holding certain titles or positions within a campaign organization, political party committee, or other political committee. A title or position is most frequently part of the grant of actual authority, either express or implied, to act on behalf of a principal. The scope of the authority created will depend on the title given and the understanding of the agent and the principal. For example, an individual with the title of fundraising chair of a campaign has actual authority to raise funds on behalf of that campaign. *See* Restatement 27, cmt a. Fundraising is within the scope of a fundraising chair's actual authority. Later actions by a principal, reasonably understood by the agent, can expand the scope of authority under either express or implied actual authority. Thus, even if the definitions of ''agent'' are limited to persons acting with actual authority, a person may be an agent as a result of actual authority based on his or her position or title within a campaign organization, political party committee, or other political committee.

b. *Actions by individuals where the candidate privately instructed the individual to avoid raising non-Federal funds.* The Commission's current definitions of ''agent'' are sufficiently broad to capture actions by individuals where the candidate authorizes an individual to solicit Federal funds on his or her behalf, but privately instructs the individual to avoid raising non-Federal funds. One commenter's scenario proposed, ''a Federal candidate publicly named a fundraising chairman who thus was vested with the apparent authority of the candidate, but where the candidate privately instructed the agent to avoid raising non-Federal funds. Suppose further that the fundraiser nonetheless solicits soft money.'' Contrary to the commenter's assertion, the fundraising chairman in this scenario could be an agent for the purpose of soliciting funds under the Commission's current regulations.[6] Because raising funds is within the fundraising chair's scope of actual authority, soft money solicitations on behalf of the candidate are prohibited. As an agent of a federal officeholder the fundraiser would be liable for any such violation. In addition, the candidate/principal may also be liable for any impermissible solicitations by the agent, despite specific instructions not to do so. *See U.S.* v. *Investment Enterprises, Inc.,* 10 F.3d 263, 266 (5th Cir. 1993) (determining that it is a settled matter of agency law that liability exists ''for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority''); *see also* Restatement 216 (''A master or other principal may be liable to another whose interests have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other or authorize the conduct of the agent causing the invasion.''); Restatement 219(1) (''A master is subject to liability for the torts of his servant committed while acting in the scope of their employment.'').

c. *Actions by individuals acting under indirect signals from a candidate.* The Commission's current definitions of ''agent'' are sufficiently broad to capture actions by individuals acting under indirect signals from a candidate. Commenters raised concerns that candidates could withhold actual authority to violate the law, but attempt to signal indirectly that the agent should ignore his or her express instructions and solicit illegal soft money nevertheless. Several commenters described this as the use of a ''wink and a nod'' that would authorize the agent to act illegally. Contrary to what these commenters suggested, however, the

[6] The Commission notes that regardless of whether it includes apparent authority in the definition of ''agent,'' for the candidate to be liable in this scenario under existing Commission regulations prohibiting soft money solicitations, the fundraising chair must be ''acting on behalf'' of the candidate when he or she makes the soft money solicitation. *See* 11 CFR 300.10(c)(1) (''An officer or agent *acting on behalf of* a national party committee or a national congressional campaign committee;'') and 300.60(c) (''Agents *acting on behalf of* a Federal candidate or individual holding Federal office;'') (emphases added). As the Commission noted in the *Soft Money Final Rules*, ''a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.'' *Soft Money Final Rules*, 67 FR at 49083.

principal's indirect signals give the fundraiser *actual* authority to raise money, and by implication, to do so illegally. *See* Restatement 26, cmt. c (''[authority to perform a particular act] may be inferred from words or conduct which the principal has reason to know indicate to the agent that he is to do the act for the benefit of the principal''). Moreover, because apparent authority is based on communications between the principal and a third party, if the principal indirectly signaled to the agent that the agent should violate the law, the principal's actions would not create apparent authority. Apparent authority does not further the Commission's efforts to prevent this type of misconduct.

d. *Actions by individuals who willfully keep a candidate, political party committee, or other political committee ignorant of their prohibited activity.* The Commission's current definitions of ''agent'' are also sufficiently broad to capture actions by individuals who willfully keep a candidate, party committee, or other political committee ignorant of their prohibited activity. In another scenario, commenters maintained that ''so long as agents keep their principals sufficiently ignorant of their particular practices * * * those operating with apparent authority could exploit their positions to continue soliciting and directing soft money contributions, continue peddling access to their principals, and continue by virtue of their *apparent* authority to perpetuate the *appearance* if not the reality of corruption.''

Assuming that apparent authority in this scenario is based on a position like that of fundraising chair, the agent would have actual authority to raise funds and thus the candidate would be liable for the agent's illegal soft money solicitations, if done on the candidate's behalf, even if the solicitations were made without the candidate's knowledge.[7] Moreover, under actual authority, a principal cannot avoid liability through attempts to keep himself ignorant of his or her agent's actions. *See* Restatement 43 (''Acquiescence by the principal in conduct of an agent whose previously conferred authorization reasonably might include it, indicates that the conduct was authorized; if clearly not included in the authorization, acquiescence in it indicates affirmance.'')

Thus, for all the reasons discussed above, actual authority, whether express or implied, is a broad concept that provides candidates, political party committees, and other political committees with the appropriate incentives to monitor the conduct of those whom they hold out to the public as their agents.

e. *Apparent authority based on direct manifestations a principal makes to a third party is not necessary to implement the purposes of BCRA and the Act because the Commission's soft money and coordination regulations would, in many situations, reach the principal's own conduct directly.* In addition, apparent authority based on *direct* manifestations a principal makes to a third party is not necessary to implement the purposes of BCRA and the Act because the Commission's soft money and coordination regulations would, in many situations, reach the principal's own conduct directly. Where a Federal candidate creates apparent authority to solicit soft money for a volunteer, employee, or consultant by talking directly to a third party, in many situations, the conversation between the candidate and the third party will constitute a solicitation by the candidate in and of itself. For example, assume a Federal candidate informs a contributor that an illegal soft money contribution to Jane Doe's gun owners' rights organization would greatly benefit the Federal candidate's campaign. Regardless of whether Jane Doe has authority to act on behalf of the Federal candidate, the Federal candidate would face liability based on his or her own comments to the contributor. Not only is the principal's statement likely captured by the Commission's current regulations, the Commission is currently conducting a rulemaking to expand its definition of ''solicit'' at 11 CFR 300.2(m), as it was understood by the *Shays* court, and in light of the Court of Appeals decision in *Shays* v. *FEC. See Notice of Proposed Rulemaking on the Definitions of ''Solicit'' and ''Direct''*, 70 FR 56599 (Sept. 28, 2005); *see also Shays* v. *FEC,* 414 F.3d 76, 105–07 (D.C. Cir. 2005) (holding the Commission's definitions of ''to solicit'' and ''to direct'' did not survive the first step of *Chevron* review.). Under this approach, liability for statements to third parties will rest directly on candidates, rather than indirectly through purported agents.

f. *Actual authority protects core political activity permitted by BCRA and affirmed by the U.S. Supreme Court in McConnell that, under an apparent authority standard, could otherwise be restricted or subject to Commission investigation.*

While the Commission's current regulations are sufficiently broad to create appropriate incentives for candidates, party committees, and other political committees to ensure that their employees and volunteers are familiar with, and comply with, BCRA's soft money and coordination provisions, the current regulations also preserve the ability of individuals to solicit funds on behalf of multiple entities. BCRA restricts the ability of Federal officeholders, candidates, and national party committees to raise non-Federal funds. BCRA does not prohibit individuals who are agents of the foregoing from also raising non-Federal funds for other political parties or outside groups.[8] As the Supreme Court made clear in *McConnell,* even ''party officials may also solicit soft money in their unofficial capacities.'' *McConnell,* 504 U.S. at 159–61. The Commission recognized in the *Soft Money Final Rules* that ''individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties.'' *Id.; see also* Restatement 13 (''merely acting in a manner that benefits another is not necessarily acting on behalf of that person.'').[9]

An apparent authority standard would potentially subject individuals conducting permissible fundraising activities to Commission complaints and investigations. Such a result would unduly burden participation in permissible political activity. For example, assume Candidate meets Contributor who mentions he is from Trenton, New Jersey. Candidate mentions to Contributor that he knows a politically prominent environmentalist named Tom who is also from Trenton. Candidate praises Tom's involvement in an environmental group in New Jersey and says, ''Say hello to Tom if you see him, and tell him to give me a call. Tom is an old friend and one of the reasons I keep getting elected.'' In fact, Tom has not spoken to the Candidate in over a year, and knows him only though past efforts to lobby him on tightening environmental laws. Contributor later meets Tom, who solicits Contributor for

[7] *See* note 6, above.

[8] Federal candidates and officeholders may raise non-Federal funds in limited circumstances. *See* 2 U.S.C. 441i(e)(1)(B), (2), and (3).

[9] In order to preserve an individual's ability to raise funds for multiple organizations, the Commission's current regulations specifically require an agent to be acting on behalf of a candidate or party committee to be subject to BCRA's soft money prohibition. *See* note 6, above.

a soft money contribution to the environmental group.

If a complaint was filed with the Commission, the Commission could, under an apparent authority standard, investigate whether Contributor reasonably believed Tom was Candidate's agent, and if so, whether Tom made the solicitation on behalf of Candidate. However, under an actual authority standard, there is no actual authority between Tom and Candidate, thereby ending the Commission's inquiry into his conduct and preserving his ability to remain active in his environmental organization.

In reaching this conclusion, the Commission is mindful that both the Supreme Court in *McConnell* and the commenters agreed that citizen participation in both Federal campaigns and with organizations that may raise soft money is permissible under BCRA.

3. *Liability premised on actual authority is best suited for the political context, which is materially different from contexts where apparent authority is applicable.*

The Commission emphasizes that the decision to exclude apparent authority from its definitions of ''agent'' is informed by the difference between the political context in which the Commission's definitions of ''agent'' operate, and the non-political contexts in which apparent authority is normally applied.[10]

Electoral campaigns are materially different from many commercial endeavors in that campaigns must depend on broad participation by volunteers. Unlike commercial agents, political volunteers have an affirmative interest in promoting and working toward the campaign's goals based on personal and ideological, rather than economic, incentives. Unlike commercial principals, campaigns welcome the assistance and support of nearly any volunteer, regardless of their expertise, availability, or exact reasons for supporting the campaign. A commercial principal does not customarily rely on a large number of mainly inexperienced volunteers to carry out its commercial purposes. Moreover, a commercial principal typically does not have a large number of people willing to work on its behalf for no economic benefit and without the commercial principal's knowledge. *See, e.g.*, AO 1999–17 (discussing campaign volunteers' independent Internet activities on behalf of a presidential campaign).

As the Commission pointed out in the *Soft Money Final Rules*, in most non-political contexts, the purpose of apparent authority is ''to protect innocent third parties who have suffered monetary damages as a result of reasonably relying on the representations of individuals who purported to have, but did not actually have, authority to act on behalf of [the] principals. Unlike other legislative areas, BCRA does not affect individuals who have been defrauded or have suffered economic loss due to their detrimental reliance on unauthorized representations.'' 67 FR 49082. *See, e.g., United States* v. *One Parcel of Land*, 965 F.2d 311, 318–19 (7th Cir. 1992) (''`Apparent authority' is a vehicle by which a principal is held vicariously liable to an innocent third party for injury resulting from the misrepresentations or misdeeds of the principal's agent who acted with apparent authority from the principal.''); *Fraioli* v. *Lemcke,* 328 F. Supp. 2d 250, 278–79 (D.R.I. 2004) (''The doctrine of apparent authority exists to promote business and protect a third party's reasonable reliance on an agency relationship.''); *Hammett* v. *VTN Corp.*, 1989 WL 149261 at *6 (E.D. La. 1989).

Instead, an overriding purpose of BCRA, and the purpose to which the rules interpreting agency are drafted, is to prevent circumvention of the Act and actual corruption or the appearance thereof. Applying apparent authority concepts developed to remedy fraud and economic loss to the electoral arena could restrict permissible electoral activity where there is no corruption or the appearance thereof.

As the Supreme Court noted in *Buckley* v. *Valeo*, ''encouraging citizen participation in political campaigns while continuing to guard against the corrupting potential of large financial contributions to candidates'' is an important goal of the Act. *Buckley* v. *Valeo*, 424 U.S. 1, 36 (1976). In the Commission's judgment, the potential of apparent authority to restrict activity that would not circumvent the statute or give the appearance of corruption outweighs any possible benefits that may be derived from providing candidates and party committees with additional incentives for monitoring their campaign workers, especially given the fact that actual authority is a broad concept that already creates appropriate incentives for such monitoring.

Conclusion

This revised Explanation and Justification, thus, addresses the three concerns articulated by the District Court in *Shays*. First, the Commission determined that its current definitions of ''agent,'' by focusing on authority to engage in a broad range of activities specifically related to BCRA-regulated conduct rather than only on expenditures, dramatically increases the number of individuals and types of conduct subject to the Act, and therefore, properly implements BCRA's prohibitions.

Second, the Commission has attempted to address the District Court's concern regarding prevention of circumvention of the Act and the appearance of corruption by explaining (1) that there is, at present, no evidence of corruption or circumvention under the current definitions of ''agent'' that dictates a change in Commission regulations; (2) that even without inclusion of apparent authority, the Commission's soft money and coordination regulations would reach situations where the principal makes *direct* manifestations to a third party regarding a person's authority to act on the principal's behalf; and (3) that even without inclusion of apparent authority, reliance on actual authority, express or implied, still reaches most situations where agency is based on title or position.

Third, this revised Explanation and Justification addresses the District Court's concern regarding a perceived misunderstanding of the law of agency, by explaining that the Commission's decision now to continue to exclude apparent authority from the definitions of ''agent'' is not based on an assumption, noted by the court, that ''rogue agents'' might potentially create liability for campaigns, party committees, or other political committees solely through the agents' own actions. Instead, the revised Explanation and Justification recognizes that apparent authority does, in fact, require affirmative conduct by a principal (whether through title or position or through direct manifestations to a third party), and that there are persuasive policy reasons for excluding apparent authority from the definitions of ''agent.''

Dated: January 24, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–853 Filed 1–30–06; 8:45 am]

BILLING CODE 6715–01–P

[10] This rulemaking does not impact the role of apparent authority in the enforcement or interpretation of commercial obligations between political committees and vendors. *See, e.g., Karl Rove & Co.* v. *Thornburgh,* 39 F.3d 1273 (5th Cir. 1994).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15471; Airspace Docket No. 03–AWA–6]

RIN 2120–AA66

Modification of the Minneapolis Class B Airspace Area; MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on November 28, 2005 (70 FR 71233), Airspace Docket No. 03–AWA–6, FAA Docket No. FAA–2003–15471. In that rule, inadvertent errors were made in the legal description of the Minneapolis Class B airspace area. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 2005, a final rule was published in the **Federal Register** modifying the Minneapolis, MN Class B Airspace Area (70 FR 71233), Airspace Docket No. 03–AWA–6, FAA Docket No. FAA–2003–15471. In that final rule, inadvertent errors were made in the legal descriptions for some of the areas; in that, the radials (from navigational aids) were listed in degrees magnetic rather than true. Normally, radials contained in a legal description are expressed in degrees true rather than magnetic. This eliminates the need for periodic rulemaking to update the radials as magnetic variation changes over time. Radials contained in the legal description are then converted from true to magnetic for charting purposes. However, because the legal description in this rule listed magnetic values rather than true, it became evident that the charted radials were not in the same locations as presented in the public meetings, studied by the ad hoc committee, and depicted in the Notice of Proposed Rulemaking (NPRM) and final rule. This action corrects the radials contained in the legal description to degrees true. This will align the charted depiction of the airspace with the intent of the Minneapolis Class B airspace area modification. When these new radials are converted and depicted on aeronautical charts, they will be the same numerical values as those presented in public meetings, studied by the ad hoc committee, and contained in the NPRM and final rule.

Due to the significant impact that the erroneous Class B boundary locations would have on aircraft operations surrounding the MSP terminal area, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

Corrections to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description for the Minneapolis Class B Airspace Area, as published in the **Federal Register** on November 28, 2005, (70 FR 71233), Docket No. 03–AWA–6, FAA Docket No. FAA–2003–15471, and incorporated in 14 CFR 71.1, is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

■ On page 71233, correct the legal description of the Minneapolis Class B Airspace, to read as follows:

Paragraph 3000 Class B Airspace

* * * * *

AGL MN B Minneapolis, MN [Corrected]

Minneapolis-St. Paul International (Wold-Chamberlain) Airport (Primary Airport)
(Lat. 44°53′00″ N., long. 93°13′01″ W.)
Gopher VORTAC
(Lat. 45°08′45″ N., long. 93°22′24″ W.)
Flying Cloud VOR/DME
(Lat. 44°49′33″ N., long. 93°27′24″ W.)
Point of Origin: Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna (I–MSP DME)
(Lat. 44°52′28″ N., long. 93°12′24″ W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 6-mile radius of I–MSP DME.

Area B. That airspace extending from 2,300 feet MSL to and including 10,000 feet MSL within an 8.5-mile radius of I–MSP DME, excluding Area A previously described.

Area C. That airspace extending from 3,000 feet MSL to and including 10,000 feet MSL within a 12-mile radius of I–MSP DME, excluding Area A and Area B previously described.

Area D. That airspace extending from 4,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of I–MSP DME and including that airspace within a 30-mile radius from the Flying Cloud 301° radial clockwise to the Gopher 301° radial and from the Gopher 121° radial clockwise to the Flying Cloud 121° radial, excluding Area A, Area B, and Area C previously described.

Area E. That airspace extending from 7,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of I–MSP DME from the Gopher 301° radial clockwise to the Gopher 358° radial, and from the Gopher 091° radial clockwise to the Gopher 121° radial, and from the Flying Cloud 121° radial clockwise to the Gopher 166° radial, and from the Gopher 176° radial clockwise to the Flying Cloud 301° radial excluding that airspace between a 25-mile radius and a 30-mile radius of I–MSP DME from the Flying Cloud 121° radial clockwise to the Gopher 166° radial, and excluding Area A, Area B, Area C, and Area D previously described.

Area F. That airspace extending from 6,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of I–MSP DME from the Gopher 166° radial clockwise to the Gopher 176° radial, excluding Area A, Area B, Area C, and Area D previously described.

* * * * *

Issued in Washington, DC, on January 25, 2006.

Kenneth McElroy,

Acting Manager, Airspace and Rules.

[FR Doc. 06–900 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22708; Airspace Docket No. 05–AAL–32]

RIN 2120–AA66

Modification of Offshore Airspace Areas: Gulf of Alaska Low and Control 1487L; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Gulf of Alaska Low and Control 1487L Offshore airspace areas in Alaska. Specifically, this action modifies the Gulf of Alaska Low and Control 1487L airspace areas in the vicinity of the Yakutat Airport, Yakutat, AK, by lowering the affected controlled airspace floor to 700 feet mean sea level (MSL) for the Gulf of Alaska Low, and 1,200 feet MSL for Control 1487L. The FAA is taking this action to provide additional controlled airspace for the safety of aircraft executing instrument flight rules (IFR) operations at the Yakutat Airport.

EFFECTIVE DATE: 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of

System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 8, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Gulf of Alaska Low and Control 1487L Offshore Control Areas in Alaska (70 FR 72950). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Gulf of Alaska Low airspace area, AK, by lowering the floor to 700 feet MSL in the vicinity of Yakutat Airport, Yakutat, AK. Additionally, the Control 1487L airspace area, AK, will be lowered from 5,500 feet MSL to 1,200 feet MSL in the vicinity of Yakutat Airport. These areas will provide controlled airspace beyond 12 miles from the shoreline of the United States where there is a requirement to provide IFR enroute Air Traffic Control services and within which the United States is applying domestic air traffic control procedures. This rule establishes controlled airspace sufficient in size to support the Terminal Arrival Area associated with new IFR operations at Yakutat Airport, AK. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed three new standard instrument approach procedures (SIAP), revised seven SIAPs and revised one departure procedure for the Yakutat Airport. Additional controlled airspace extending upward from 700 feet and 1,200 feet above the surface in international airspace is created by this action. The airspace is sufficient to support IFR operations at the Yakutat Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, the notice of this action is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Gulf of Alaska Low, AK [Amended]

That airspace extending upward from 700 feet MSL bounded by a line beginning at a point where the 12-mile offshore limit intersects long. 144°30′00″ W.; thence eastward 12 miles off shore and parallel to the shoreline to lat. 59°10′36″ N., long. 139°31′10″ W.; to lat. 59°02′49″ N., long. 139°47′45″ W.; to lat. 59°27′12″ N., long. 140°31′10″ W.; thence westward along the south boundary of V–440 to long. 144°30′00″ W.; thence northward along long. 144°30′00″ W.; to the point of beginning.

* * * * *

Control 1487L [Amended]

That airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′34″ N., long. 147°16′06″ W.; thence counterclockwise via the arc of a 149.5-mile radius centered on the Anchorage VOR/DME to the intersection of the 149.5-mile radius arc and a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32′57″ N., long. 133°11′29″ W.; to lat. 54°00′00″ N., long. 136°00′00″ W.; to lat. 52°43′00″ N., long. 135°00′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33′25″ N., long. 141°03′22″ W.; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56′18″ N., long. 138°45′19″ W.; to lat. 58°40′00″ N., long. 139°30′00″ W.; to lat. 59°00′00″ N., long.

141°10′00″ W.; to the point of beginning. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on January 25, 2006.

Kenneth McElroy,

Acting Manager, Airspace and Rules.

[FR Doc. 06–898 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') is amending the Appliance Labeling Rule to update ranges of comparability for compact clothes washers, refrigerators, refrigerator-freezers, and freezers. In addition, the Commission announces that ranges of comparability for standard clothes washers will remain in effect until further notice. Finally, the Commission is issuing minor, technical amendments to update the definition of medium base compact fluorescent lamp and to correct a sample heat pump label in the Rule.

EFFECTIVE DATE: May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov.*

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule covers several categories of major household appliances including refrigerators, refrigerator-freezers, and freezers.

I. Background

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label, in fact sheets (for some appliances), and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of similar models. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission.[2] These reports, which assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and discontinue others, the data base from which the ranges of comparability are calculated changes constantly. To keep the information on labels up-to-date, the Commission, therefore, publishes new ranges if the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

II. 2005 Refrigerator and Clothes Washer Data

The Commission has analyzed the annual submissions of data for clothes washers, refrigerators, refrigerator-freezers, and freezers. Analysis of the refrigerators, refrigerator-freezers, and freezers submissions indicates that the ranges for these products have changed significantly.[3] Therefore, the Commission is publishing new ranges of comparability in these categories. Today's publication of the new ranges for refrigerators, refrigerator-freezers, and freezers also means that, after May 1, 2006, manufacturers of these products must calculate the operating cost figures at the bottom of labels for the products using the 2005 cost for electricity (9.06 cents per kilowatt-hour) (see 70 FR 32484 (June 3, 2005)).

Analysis of the clothes washer submissions indicate that there has been a significant change in the range for compact clothes washers but no significant change for standard clothes washers. Manufacturers should continue to use the existing range and energy cost information found in the Rule for standard clothes washers. The Commission, however, is amending the required range of comparability for compact clothes washers to reflect the new data.[4] The Commission is not changing the energy cost figures (*i.e.*, the average national prices for electricity and natural gas) that manufacturers must use to calculate estimated operating costs on compact clothes washer labels. Manufacturers should continue to use the 2004 electricity and natural gas cost figures as currently required by the Rule for both compact and standard models. If standard and compact washer labels employed different energy cost figures for calculating operating costs, models with the identical energy consumption would bear labels disclosing different annual operating costs. This could cause consumer confusion and make it difficult for consumers to compare the operating costs of these washer types.

III. Definition of Medium Base Compact Fluorescent Lamp

The Energy Policy Act of 2005 (EPACT of 2005) (Pub. L. 109–58) amended the definition of ''medium base compact fluorescent lamp'' in part B of title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291–6309). On October 18, 2005 (70 FR 60407), DOE issued technical amendments to change, among other things, the regulatory definition of ''medium base compact fluorescent lamp'' to make it consistent with the amended Act. The Commission is changing the definition of this term in its Rule so that it is consistent with DOE's rules and the new statutory definition.

IV. Correction to Prototype Label 5 and Sample Label 9

The Commission is issuing a correction to Prototype Label 5 and Sample Label 9 in the Rule. The word ''cooling,'' instead of ''heating,'' was incorrectly placed in the label's depiction of the model's Heating Seasonal Performance Factor. In

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1. Reports for clothes washers are due October 1.

[3] The Commission's analysis for refrigerators, refrigerator-freezers, and freezers excluded models with energy consumption figures that do not meet the current DOE energy conservation standards. See 62 FR 23102 (April 28, 1997).

[4] Compact clothes washers account for a small fraction of the total washer models on the market.

addition, the description of the Seasonal Energy Efficiency Ratio (SEER) for heat pumps has been changed to remove an erroneous reference to central air conditioners.

V. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range and cost information required on EnergyGuide labels and fact sheets and technical corrections to the Rule. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

VI. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels and make technical corrections to the Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[5] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until December 31, 2007. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

VIII. Amendments

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons stated in this document, the Federal Trade Commission is amending 16 CFR part 305 as set forth below:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, paragraph (l) is revised to read as follows:

§ 305.3 Description of covered products.

* * * * *

(l) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is—

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

* * * * *

■ 3. Appendix A1 to part 305 is revised to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 2.5	327	327
2.5 to 4.4	307	385
4.5 to 6.4	305	511
6.5 to 8.4	(*)	(*)
8.5 to 10.4	348	348
10.5 to 12.4	(*)	(*)
12.5 to 14.4	311	311
14.5 to 16.4	428	428
16.5 and over	372	438

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 4. Appendix A2 to part 305 is revised to read as follows:

Appendix A2 to Part 305—Refrigerators and Refrigerator-Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 2.5	253	318
2.5 to 4.4	260	343
4.5 to 6.4	268	357
6.5 to 8.4	277	277
8.5 to 10.4	230	336
10.5 to 12.4	288	345
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	335	404
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	449	449
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 5. Appendix A3 to part 305 is revised to read as follows:

[5] 44 U.S.C. 3501–3520.

Appendix A3 to Part 305—Refrigerator-Freezers With Partial Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	254	434
10.5 to 12.4	314	314
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 6. Appendix A4 to part 305 is revised to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	325	460
10.5 to 12.4	369	408
12.5 to 14.4	373	440
14.5 to 16.4	372	455
16.5 to 18.4	391	484
18.5 to 20.4	387	489
20.5 to 22.4	405	527
22.5 to 24.4	450	499
24.5 to 26.4	445	520
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 7. Appendix A5 to part 305 is revised to read as follows:

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	530	530
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	610	624
20.5 to 22.4	510	640
22.5 to 24.4	643	653
24.5 to 26.4	561	661
26.5 to 28.4	668	668
28.5 and over	585	689

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 8. Appendix A6 to part 305 is revised to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	430	451
10.5 to 12.4	439	500
12.5 to 14.4	(*)	(*)
14.5 to 16.4	453	544
16.5 to 18.4	465	548
18.5 to 20.4	476	573
20.5 to 22.4	483	569
22.5 to 24.4	440	520
24.5 to 26.4	465	594
26.5 to 28.4	475	530
28.5 and over	499	499

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 9. Appendix A7 to part 305 is revised to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 10. Appendix A8 to part 305 is revised to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	553	651
20.5 to 22.4	432	671
22.5 to 24.4	539	698
24.5 to 26.4	578	732
26.5 to 28.4	615	751
28.5 and over	565	790

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

Cost Information for Appendices A1 Through A8

When the ranges of comparability in Appendices A1 through A8 are used on EnergyGuide labels for refrigerators and refrigerator-freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2005 Representative Average Unit Cost for electricity (9.06¢ per kilowatt-hour), and the text below the box must identify the cost as such.

■ 11. Appendix B1 to part 305 is revised to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	272	328
5.5 to 7.4	354	354
7.5 to 9.4	292	341
9.5 to 11.4	353	392
11.5 to 13.4	354	410
13.5 to 15.4	409	341
15.5 to 17.4	430	477
17.5 to 19.4	392	392
19.5 to 21.4	512	512
21.5 to 23.4	(*)	(*)
23.5 to 25.4	580	580
25.5 to 27.4	(*)	(*)
27.5 to 29.4	477	477
29.5 and over	512	512

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 12. Appendix B2 to Part 305 is revised to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	482	491
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	(*)	(*)
11.5 to 13.4	575	575
13.5 to 15.4	582	655
15.5 to 17.4	601	683

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
17.5 to 19.4	635	742
19.5 to 21.4	671	770
21.5 to 23.4	796	796
23.5 to 25.4	855	855
25.5 to 27.4	(*)	(*)
27.5 to 29.4	683	683
29.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

■ 13. Appendix B3 to part 305 is revised to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	185	357
5.5 to 7.4	215	381
7.5 to 9.4	251	251
9.5 to 11.4	248	312
11.5 to 13.4	276	350
13.5 to 15.4	354	394
15.5 to 17.4	282	360
17.5 to 19.4	(*)	(*)
19.5 to 21.4	350	415
21.5 to 23.4	460	512
23.5 to 25.4	570	570
25.5 to 27.4	354	394
27.5 to 29.4	(*)	(*)
29.5 and over	512	512

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

Cost Information for Appendices B1 Through B3

When the ranges of comparability in Appendices B1 through B3 are used on EnergyGuide labels for freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2005 Representative Average Unit Cost for electricity (9.06¢ per kilowatt-hour), and the text below the box must identify the cost as such.

■ 14. Appendix F2 to Part 305 is revised to read as follows:

Appendix F2 to Part 305—Compact Clothes Washers

RANGE INFORMATION

["Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.]

Capacity	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Compact	125	462

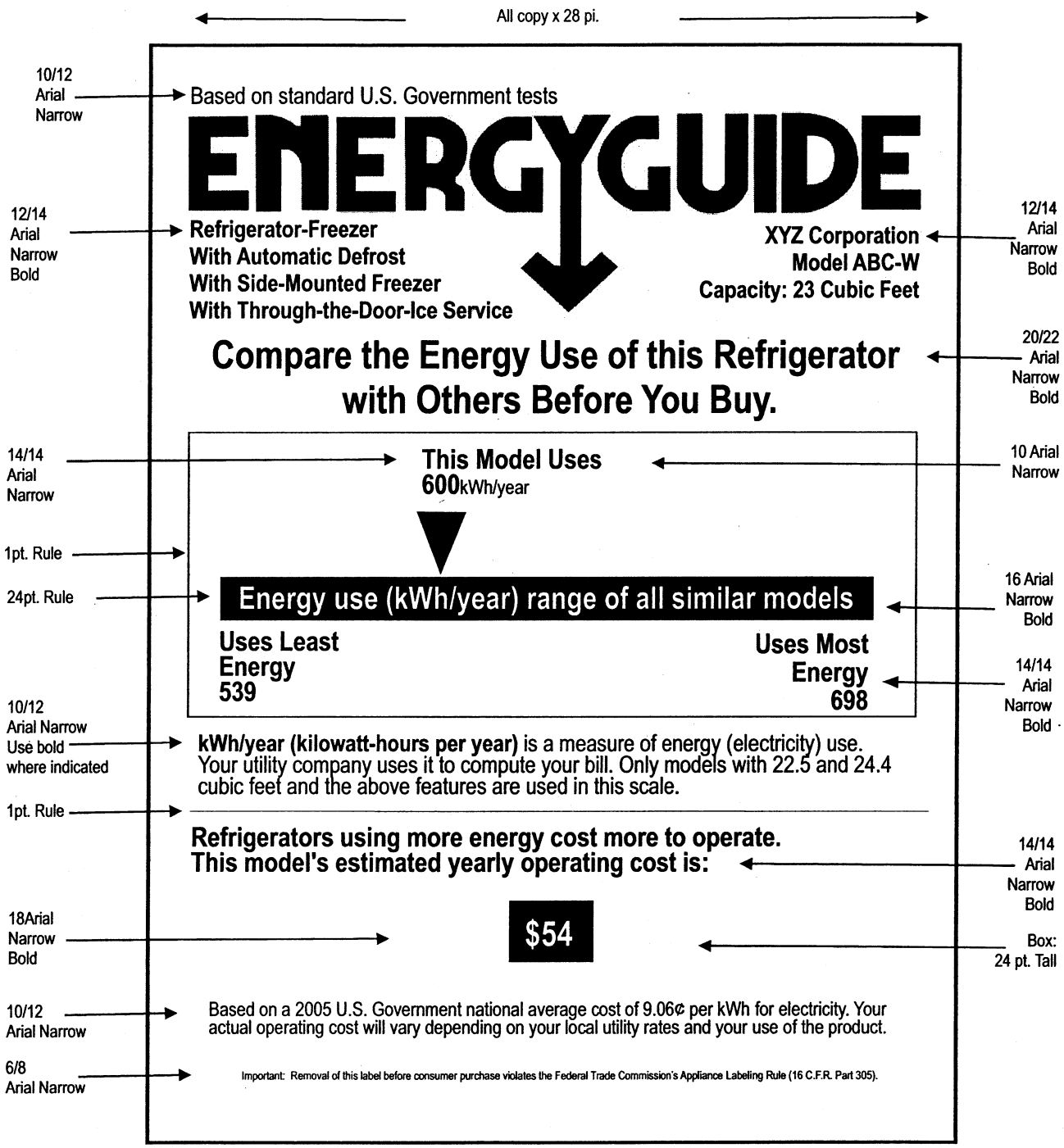
Cost Information

When the above range of comparability is used on EnergyGuide labels for compact clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

■ 15. Prototype Label 1 in Appendix L to part 305 is revised to read as follows:

* * * * *

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.



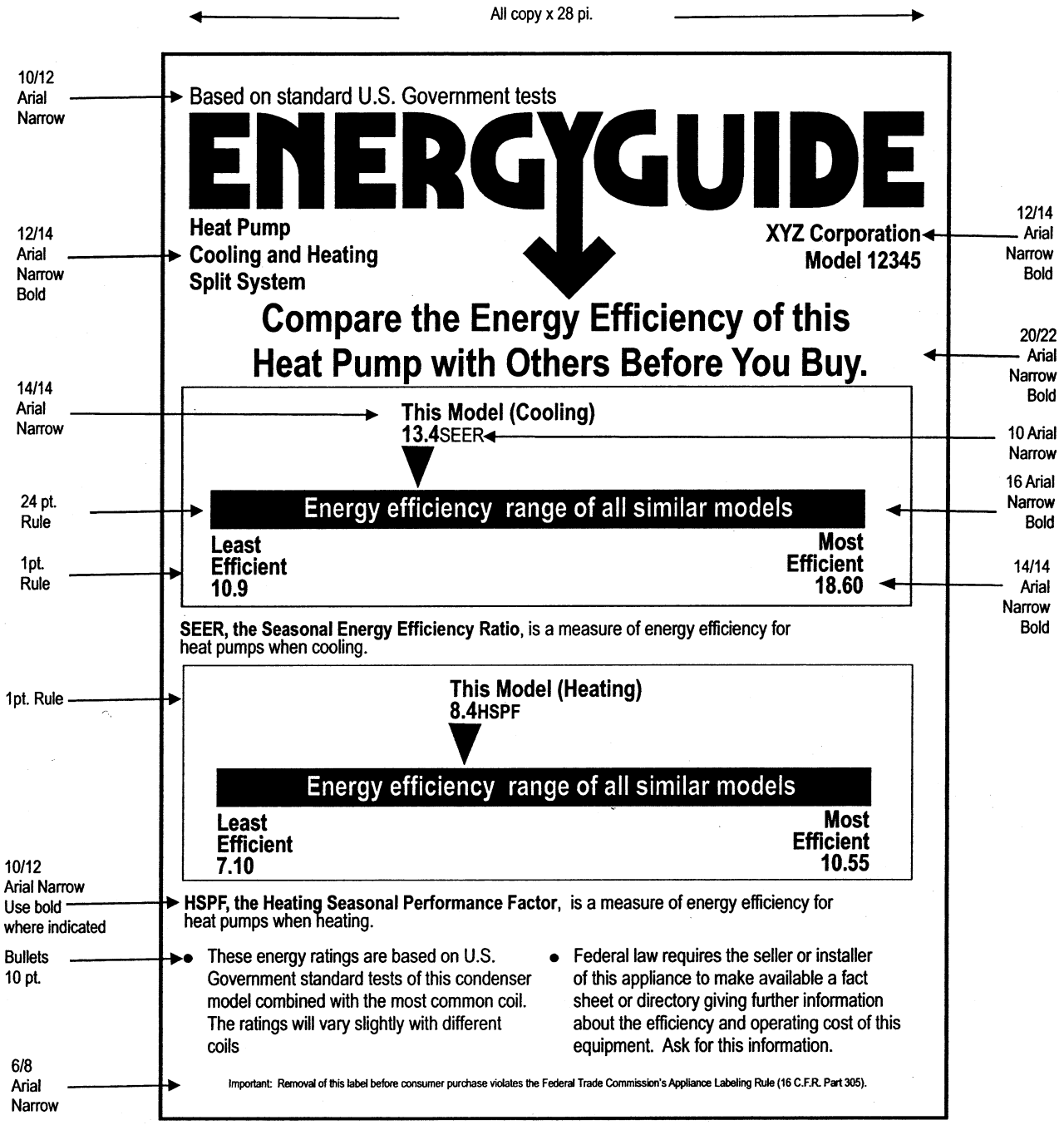
Prototype Label 1

* * * * *

■ 16. Prototype Label 5 in Appendix L to part 305 is revised to read as follows:

* * * * *

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

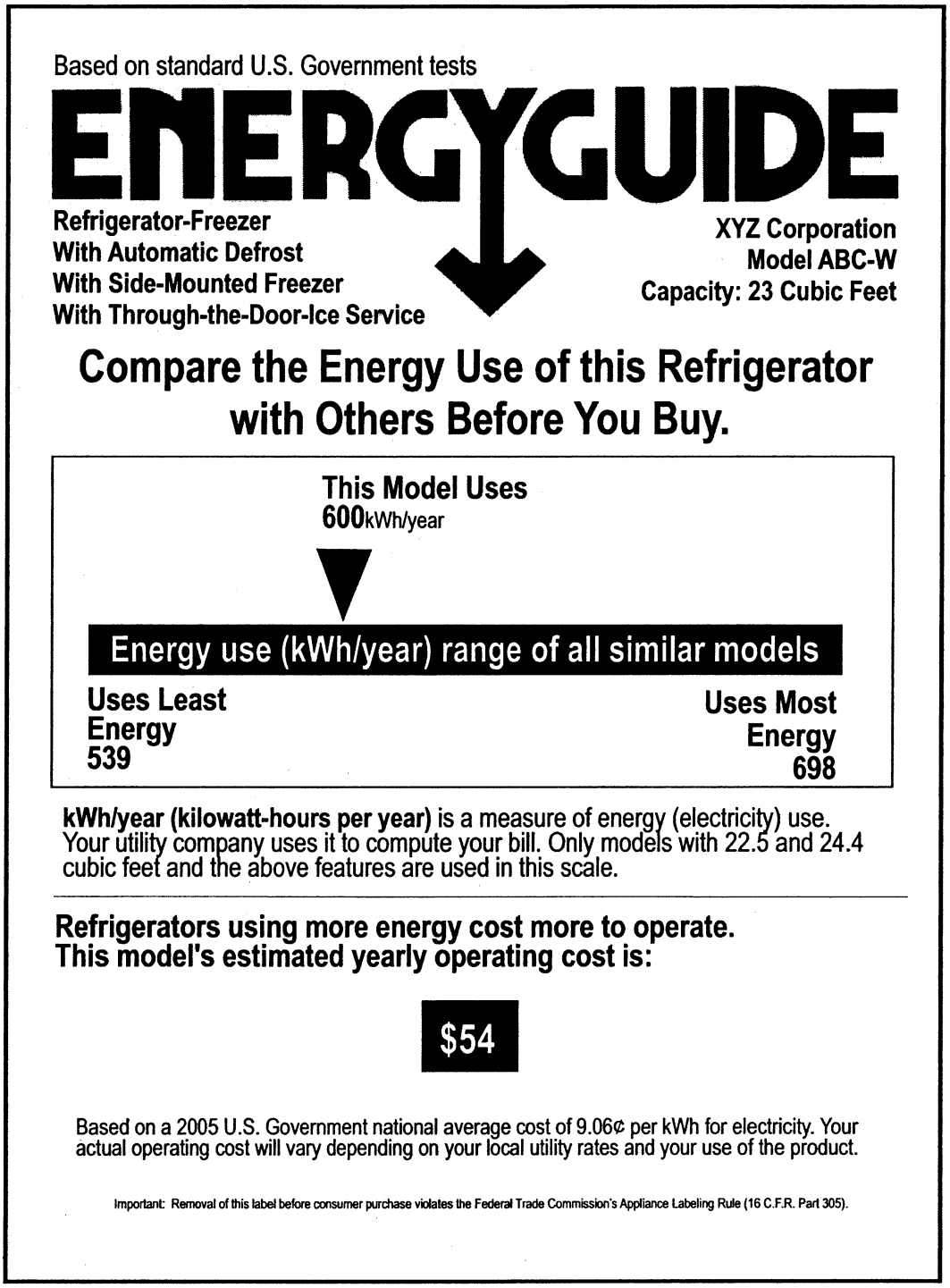


Prototype Label 5

* * * * *

■ 17. Sample Label 1 in Appendix L to part 305 is revised to read as follows:

* * * * *



Sample Label 1

* * * * *

■ 18. Sample Label 2 in Appendix L to part 305 is revised to read as follows:

* * * * *

Based on standard U.S. Government tests

ENERGYGUIDE

Freezer
Upright Type
With Manual Defrost

XYZ Corporation
Model(s) MR328, XI12, NA 83
Capacity: 21.2 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses
700kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
671

Uses Most Energy
770

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 19.5 to 21.4 cubic feet with the above features are used in this scale.

Freezers using more energy cost more to operate. This model's estimated yearly operating cost is:

$63

Based on a 2005 U.S. Government national average cost of 9.06¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

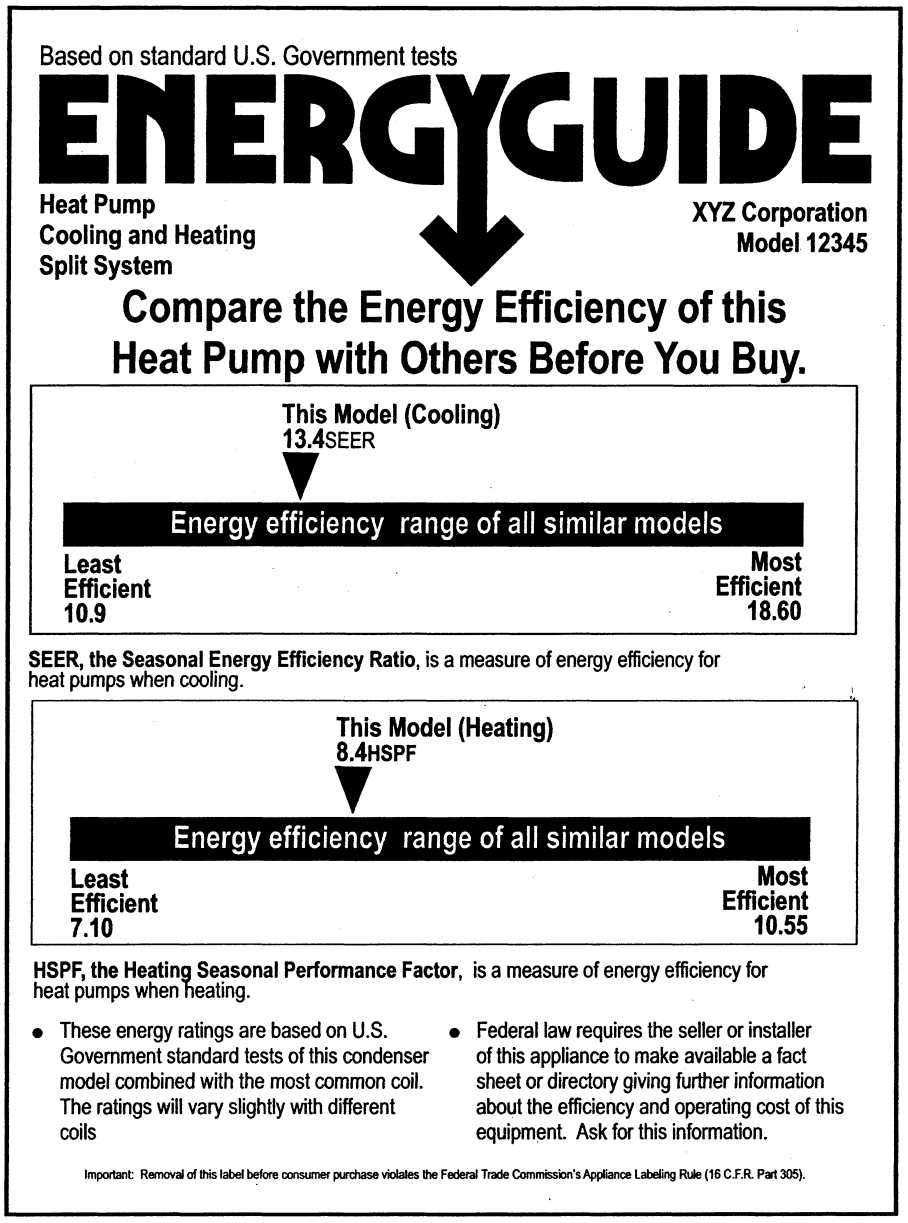
Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 2

* * * * *

■ 19. Sample Label 9 in Appendix L to part 305 is revised to read as follows:

* * * * *



Sample Label 9

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–882 Filed 1–30–06; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2005–20764]

RIN 2125–AF05

Project Authorization and Agreements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations relating to project authorization and agreements and the effect on obligations of Federal-aid highway funds under these requirements. The changes in this rulemaking will assist the States and the FHWA in monitoring Federal-aid highway projects and provide greater assurance that the Federal funds obligated reflect the current estimated cost of the project. In the event that Federal funds are de-obligated as a result of these changes, those funds may then be obligated for new or other active projects needing additional funding to the extent permitted by law.

EFFECTIVE DATE: March 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Gray, Federal-aid Financial Management Division, (202) 366–0978, or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using the Internet to reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

The FHWA currently funds more than 120,000 highway projects that are administered by State and local governments. The amount of Federal funds legally obligated (committed) to a project is generally based on an estimate of the cost to complete the project. As a project progresses, those costs may increase or decrease. The U.S. Department of Transportation's Office of Inspector General has repeatedly found that some States have failed to timely release Federal funds when project estimates decrease or when projects are completed and no additional expenditures are expected.[1] The failure to take timely action reduces the amount of Federal funds available to finance new projects. The FHWA has worked with the States for many years to identify projects where funds can be released and has recommended that States adopt certain best practices to further the efficient use of Federal funds. Nevertheless, in Fiscal Year 2005, the FHWA identified over $750 million of Federal funds on inactive projects that could be released, and in most cases reapplied to new projects. Because substantial unneeded obligations continue to be identified, despite the implementation of best practice procedures in many States, the FHWA believes regulations are necessary to clearly define the responsibilities and procedures for identifying and releasing these funds. In addition, as a Federal agency, the FHWA is responsible for maintaining valid obligations and must annually certify that the amounts shown as obligated in its financial statements are accurate.

The FHWA is revising its regulation relating to project agreements, 23 CFR 630, to establish a systematic process that will assist the States and FHWA in monitoring projects, provide greater assurance that the amount of Federal funds obligated on a project reflects the current cost estimate, and ensure that funds no longer needed are de-obligated in a timely manner. The new requirements included in the final rule are consistent with Federal appropriation law principles requiring Federal obligations to be based on a documented cost estimate and revised if the estimate changes.[2]

The regulation will require the States to monitor projects and (1) de-obligate Federal funds when the amount obligated exceeds the current cost estimate by $250,000 or more, and (2) re-evaluate cost estimates on inactive projects and release unneeded funds. The FHWA will revise the Federal obligation amount if the State fails to take action as required by the regulation.

Notice of Proposed Rulemaking (NPRM)

The FHWA published a notice of proposed rulemaking (NPRM) on July 11, 2005, at 70 FR 39692. In the NPRM, the FHWA proposed to (1) require the de-obligation of Federal funds that remain committed to inactive projects as well as require the de-obligation of excess funds not needed for a project; (2) reduce the occurrences where Federal funds are committed to inactive projects or where an obligation is in excess of the amount needed to complete the project; (3) establish a project completion date that would be added in all new project agreements and in those cases where modifications are made to existing project agreements; and (4) require States to assure that third party contracts and agreements are processed and billed promptly when the work is completed.

We received comments from 56 entities. The comments that were received included; 37 State transportation departments (States), 10 local governments, four metropolitan planning organizations, two companies, one individual representing five States, and two national associations, the American Association of State Highway and Transportation Officials (AASHTO) and the Association of American Railroads (AAR).

Discussion of Comments by Section

General

Thirty commenters included a statement supporting the efficient use of Federal funds and closing out projects. For example, AASHTO, which represents the State transportation departments, expressed full support for the goal of increasing the efficient use of Federal funds and the timeliness of project close-outs, but expressed substantial concern that the proposed provisions would be burdensome for the State and local governments to implement. Comments from the TG Associates expressed support for FHWA's commitment and efforts to foster fiscal stewardship and improve financial management. Michigan DOT agreed that adequate financial controls need to be in place to make certain that all available Federal funds are used in a timely fashion for transportation improvements, but was concerned about the ''one-size-fits-all approach'' proposed in the NPRM. The County of Los Angeles, California, agreed with the overall objective of the proposed changes and stated that an increase in the collaborative efforts among the FHWA, the States, and third-party agencies is needed to improve the management of Federal funds.

Twenty-seven commenters expressed opposition to some or all of the proposed changes. Among the reasons

[1] See DOT IG Report Number FI–2006–011, entitled, ''Inactive Obligations, Federal Highway Administration,'' dated November 14, 2005, available at *http://www.oig.dot.gov/item.jsp?id=1722*.

[2] See the ''Principles of Federal Appropriations Law, 3rd Edition'' available at *http://www.gao.gov/special.pubs/redbook1.html*.

given for those in opposition were that the unilateral action on the part of FHWA to de-obligate funds is contrary to the cooperative working relationship of the States and the FHWA, concern that a State may lose funds, concern that the process would be burdensome for the States, and States that currently manage funds effectively would be penalized under a one-size-fits-all approach. AASHTO recommended that the FHWA work cooperatively with the States to develop a rule that works for all parties.

The FHWA has been working with the States for a number of years, but these efforts have not resulted in a reduced level of unneeded obligations on a national level. In our view, a consistent policy is necessary for the States to clearly understand the level of effort necessary to properly manage Federal funds. While some commenters were concerned that the requirements would be burdensome, we believe that the effective management of funds is a prudent government agency business practice. The FHWA recognizes that some States may need to apply additional resources to manage funds to meet the requirements of this rule, but the result is that funds will be made available to finance new or active projects that will benefit the State in meeting its transportation needs. The regulation does not require the release of any funds that are needed for a valid and current obligation.

There were some questions about the application of these new requirements, i.e., would the requirements apply to all projects, and how are projects defined? For example, the Arizona DOT recommended that congressionally mandated projects be exempt from the proposed changes, and the South Carolina DOT recommended that a State be allowed to choose whether to define a project as the entire project or as a phase of the project. The Tri-County Regional Planning Commission, California, recommended that projects for statewide planning and environmental studies be excluded from the proposed requirements.

The requirements established in the final rule apply to any project for which the State and the FHWA enter into a project agreement under Title 23 CFR 630, subpart A, which generally includes congressionally mandated projects and planning projects. There is no basis to exempt any project from the requirement to maintain a valid obligation. The scope of the project is defined in the project agreement that is initiated by the State and may include only a single phase of work, such as design or construction, or may include multiple phases under a single agreement.

Section 630.106

In the NPRM, we proposed to include section 630.106(a)(3) that would have required the States to promptly (1) revise the amount obligated on a project when the cost estimate decreases by $100,000 or 10 percent and (2) to adjust the amount obligated on inactive projects that are expected to be inactive for 24 months.

Most of the commenters stated that modifying changes of ''$100,000 or 10 percent'' would require additional administrative effort by the State and local agencies and would result in an inefficient use of limited resources. Since project costs range from a few thousand dollars to tens of millions of dollars, many of the commenters recommended that different parameters be established. Recommended parameters ranged from $200,000 to $500,000 and from 2 percent to 10 percent of project costs. For example, the Indiana Department of Transportation (DOT) stated that a more workable solution would be to change the threshold to $250,000. The Connecticut DOT and Maryland DOT recommended parameters of $250,000 or 5 percent, whichever is greater, and the Florida DOT recommended that projects with estimated costs of $5,000,000 or less be exempt from the requirement.

We agree that the parameters should be changed to enable the States to focus resources on significant sums of Federal funds obligated on large-scale projects. Based upon the comments such as those mentioned above, the FHWA is revising this provision to require a State to maintain a process for revising cost estimates as required by Federal appropriations law principles referenced in the Background section. As a minimum, a State will be required to revise the Federal obligation amount on a project within 90 days when the Federal share decreases by $250,000 or more.

Most of the commenters recommended that the term ''promptly'' be removed from the regulation or be specifically defined. The Pennsylvania DOT stated that the term ''promptly'' could be interpreted to require daily accounting and adjustment of Federal-aid obligations. While the commenters did not suggest a definition for the term, we agree that the term should be defined and have defined ''promptly'' as being ''within 90 days after the State or local agency determines that the costs have decreased.'' We believe that 90 days after the determination that an adjustment to the obligation amount is needed is sufficient time to process a modified agreement to adjust the obligations.

The Michigan DOT stated that financial monitoring should occur at the end of each phase of a job/project. We agree that this should not be a daily activity and are including language to clarify that re-estimates would only be expected at the end of a project phase or when some other significant event occurred that would impact project costs, such as a value engineering study or a change in design. For clarity we have separated this provision that relates to all projects from the provision that relates to ''inactive projects.''

Some commenters expressed concern about the use of the term, ''inactive projects.'' The term was defined in the NPRM as projects for which no costs have been billed to FHWA in the past 12 months. We recognize that a number of factors can result in no billings for 12 months, but the objective of the requirement is to identify projects that need to be evaluated and a lack of billing is the best indicator available to the FHWA that a project may be stalled or completed. If the State determines that work on the project is still underway or that the obligation amount is valid, then no further action is needed. Most commenters recommended that the inactivity threshold be extended to 24 months. For example, AASHTO stated that 24 months of inactivity on a project is a more reasonable timeframe than 12 months because there are multiple reasons why projects may not be finalized within a one-year period.

We agree that 24 months may be an appropriate time period for most projects and have revised the rule to state that projects with unexpended obligations of $50,000 to $500,000 are not required to be evaluated until they are determined to be inactive for a 24-month period. However, we believe that 12 months is a more appropriate time to review the projects that have larger amounts of unexpended obligations so that if unneeded funds are identified, these more significant amounts do not remain idle for an additional year. Our current practice is to review projects that are inactive for 12 months with unexpended obligations over $500,000. As noted in the background section, our review in Fiscal Year 2005 identified over $750 million that could be applied to active projects. We believe that these projects should be reviewed after 12 months of inactivity. Allowing the States to review projects with $50,000 to $500,000 of unexpended obligations after two years of inactivity will reduce

the burden on the States in complying with this provision. To further reduce the State's burden, the final rule allows projects with unexpended obligations less than $50,000 to be reviewed after 36 months of inactivity.

Recognizing that projects may be entering inactive status on a daily basis, the FHWA is clarifying that States are not required to review inactive projects more often than quarterly. Previously, the FHWA reviewed inactive projects on an annual basis but has determined that an annual review allows unneeded funds to remain on a project too long before a review is performed. Quarterly reviews also result in a more orderly and routine review and analysis of inactive projects.

Some commenters were concerned about the provision that would have required adjustments to projects that are ''unlikely to proceed within the next 12 months,'' stating that such a determination would be difficult to predict in most cases. For example, Montana DOT stated that additional clarification is needed to define what is meant by ''unlikely to proceed.'' The purpose of this provision was to ensure that funds are not obligated for a project prematurely which would tie-up funds that should be used for projects that are ready to be advanced. We agree with the comments that it would be difficult to determine that a project is ''unlikely to proceed'' and are not including the provision in the final rule. We are replacing this provision with a general provision that an obligation of Federal funds must be documented and based on the State's best estimate of costs. This provision reflects the requirements of the Federal appropriations law principles as discussed in the background section.

In the NPRM, we proposed to revise obligations when the State fails to take the required actions under these requirements. Some commenters suggested that the FHWA should have the discretion to take action, but that it should not be a mandatory requirement so that the FHWA can adequately react to the various circumstances. Since this rule requires the States to take specific actions to manage funds, we believe that if the FHWA has determined that a de-obligation of funds is appropriate and the State has failed to act in a timely manner, that the FHWA should revise the obligations or take other appropriate action.

Most commenters recommended that the FHWA should be required to consult with the State before adjusting obligations. The Arizona DOT strongly objected to the language in the NPRM because it allows the FHWA to de-obligate Federal funds on a project with absolutely no consultation with the State. The Arizona DOT recommended that the State be notified 60 days before funds are de-obligated. We agree that the FHWA should advise and consult with the State before the FHWA unilaterally de-obligates funds. We have added a statement in the rule that the FHWA will advise the State of its proposed actions and provide an opportunity for the State to respond. We did not specify an amount of time to be provided to the State to respond as recommended by Arizona DOT because circumstances will differ from State to State. We view this action on the part of the FHWA as a remedy of last resort, and expect unilateral actions by FHWA to be rare.

Concerns were expressed that de-obligations at the end of the fiscal year may result is a loss of obligation authority. For example, the California DOT stated that FHWA should make sure that the States do not lose any obligation authority if the timing of de-obligations is close to the end of the Federal fiscal year. We also recognize that Congress intends that all obligation authority be used before the end of a fiscal year, and to further such intent Congress provides for an August redistribution of that authority to ensure that it is fully used. The final rule has been revised to include a provision that no adjustments in obligations will occur from August 1 to September 30 to ensure the efficient execution of the August redistribution process unless the State requests the adjustment.

Sections 630.108 and 630.110

In the NPRM, the FHWA proposed revisions to sections 630.108 and 630.110 that would have required States to establish a project completion date in the Federal-aid project agreement. If the project is delayed, the completion date could be revised except that the date could not be changed because of a delay in billing or processing third party claims. When the completion date occurs, the State would be required to close the project within 90 days.

Almost all commenters expressed opposition to these provisions. AASHTO summed up many of the comments by stating that the definition of ''project completion date'' needs to be clarified; it is impractical to establish project completion dates in the early phases of project development; it is impossible for the States to ensure third party compliance, particularly those States that have statutory time allowances for submitting claims; and that the 90-day closing requirement would result in State and local agencies having to absorb the remaining costs without reimbursement. The AAR stated that the project completion date provides insufficient time for the processing of bills and that closure and release of unexpended funds within 90 days of the completion date is inconsistent with commercial practices.

In response to these comments, we will not revise sections 630.108 and 630.110 at this time. The FHWA plans to modify its Fiscal Management Information System (FMIS) during Fiscal Year 2006 to include a project completion date simply as an information item. The FMIS tracks the amount of and type of Federal funds obligated on individual Federal-aid highway projects and collects a variety of data on the projects, such as, type of work, location, project description, etc. We will work with the States to better define the project completion date and the best way to use the date to improve project funds management.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. We anticipate that the economic impact of this rulemaking will be minimal. In fact, funds released as a result of a de-obligation under this rule will be credited to the same program category and will be immediately available for obligation and expenditure on eligible projects in accordance with 23 U.S.C. 118(d). This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this final rule on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule addresses obligations of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act

does not apply and the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This action will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. This final action addresses obligations of Federal funds to States for Federal-aid highway projects and will not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use Dated May 18, 2001. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Reimbursement, Grant programs—transportation, Highways and roads.

Issued on: January 25, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending title 23, part 630, Code of Federal Regulations as follows:

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Project Authorization and Agreements

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 31 U.S.C. 1.32; and 49 CFR 1.48(b).

■ 2. Amend § 630.106 by revising the heading to read as set forth below, and adding paragraphs (a)(3), (4), (5), and (6) to read as follows:

§ 630.106 Authorization to proceed and Project Monitoring.

(a) * * *

(3) The State's request that Federal funds be obligated shall be supported by a documented cost estimate that is based on the State's best estimate of costs.

(4) The State shall maintain a process to adjust project cost estimates. For example, the process would require a review of the project cost estimate when the bid is approved, a project phase is completed, a design change is approved, etc. Specifically, the State shall revise the Federal funds obligated within 90 days after it has determined that the estimated Federal share of project costs has decreased by $250,000 or more.

(5) The State shall review, on a quarterly basis, inactive projects (for the purposes of this subpart an ''inactive project'' means a project for which no expenditures have been charged against Federal funds for the past 12 months) with unexpended Federal obligations and shall revise the Federal funds obligated for a project within 90 days to reflect the current cost estimate, based on the following criteria:

(i) Projects inactive for the past 12 months with unexpended balances more than $500,000,

(ii) Projects inactive for the past 24 months with unexpended balances of $50,000 to $500,000, and

(iii) Projects inactive for the past 36 months with unexpended balances less than $50,000.

(6) If the State fails to comply with the requirements of paragraphs (a)(3), (4), or (5) of this section, then the FHWA shall revise the obligations or take such other action as authorized by 23 CFR 1.36. The FHWA shall advise the State of its proposed actions and provide the State with the opportunity to respond before actions are taken. The FHWA shall not adjust obligations without a State's consent during the August redistribution process, August 1 to September 30.

* * * * *

[FR Doc. 06–863 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9248]

RIN 1545–BC86

Residence Rules Involving U.S. Possessions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations, temporary regulations, and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code (Code).

DATES: *Effective Date:* These regulations are effective January 31, 2006.

Applicability Dates: For dates of applicability, see §§ 1.881–5(f)(8) and 1.937–1(i).

FOR FURTHER INFORMATION CONTACT: J. David Varley, (202) 435–5262 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1930.

The collections of information in these final regulations are in § 1.937–1. The collection of information required by § 1.937–1(h) is to ensure that individuals claiming to become, or cease to be, residents of a U.S. possession file notice of such a claim with the Internal Revenue Service in accordance with section 937(c) of the Code. Individuals subject to this reporting requirement must retain information to establish their residency as required by section 937(c) of the Code and § 1.937–1. An additional collection of information in these final regulations is in § 1.937–1(c)(4)(iii). This information is required to satisfy the documentation and production requirements for individuals who come within an exception to the presence test of § 1.937–1(c) as a consequence of receiving (or accompanying certain family members who receive) qualifying medical treatment.

The collections of information are mandatory and will be used for audit and examination purposes. The likely respondents are individuals who become (or cease to be) bona fide residents of a U.S. possession and individuals who, in satisfying the presence test requirement for bona fide residence in a possession, exclude days in the U.S. or include days in a relevant possession because they receive (or accompany certain family members who receive) qualifying medical treatment.

Estimated total annual reporting and/or recordkeeping burden: 300,000 hours.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 75,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The American Jobs Creation Act of 2004 (Pub. L. 108–357) was enacted on October 22, 2004. Section 809 of the Act added section 937 to the Code, relating to residence, source, and effectively connected income with respect to the U.S. possessions. On April 11, 2005, the IRS and Treasury published in the **Federal Register** temporary regulations (TD 9194, 70 FR 18920, as corrected at 70 FR 32589–01), which provided rules to implement section 937 and to conform existing regulations to other legislative changes with respect to U.S. possessions. A notice of proposed rulemaking (REG–159243–03, 70 FR 18949) cross-referencing the temporary regulations was published in the **Federal Register** on the same day. Written comments were received in response to the notice of proposed rulemaking and a public hearing on the proposed regulations was held on July 21, 2005. The proposed regulations relating to the residence rules (specifically, §§ 1.937–1 and 1.881–5T(f)(4)) are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below. The remainder of the proposed and temporary regulations, relating to source and effectively connected income with respect to U.S. possessions, will be finalized together with the other conforming changes in a forthcoming Treasury decision.

Explanation of Provisions and Summary of Comments

The proposed and temporary regulations under Code section 937(a) provide rules for determining whether an individual is a ''bona fide resident'' of a U.S. possession. Generally, § 1.937–1T provides that an individual is a bona fide resident of a possession if the individual meets a presence test, a tax home test and a closer connection test. The IRS received comments relating to each of the three tests.

I. Presence Test

A. General Rule

Under section 937(a)(1), in order to satisfy the presence test, a person must be present in the possession for at least 183 days during the taxable year (the 183-day rule). The proposed and temporary regulations provide several alternatives to the 183-day rule for purposes of satisfying the presence test. Thus, an individual who does not satisfy the 183-day rule nevertheless meets the presence test under the proposed and temporary regulations if the individual spends no more than 90

days in the United States during the taxable year; the individual spends more days in the possession than in the United States and has no earned income in the United States; or the individual has no permanent connection to the United States.

The proposed and temporary regulations also provide a special rule for nonresident aliens in lieu of the 183-day rule and its alternatives. This special rule reflects the intention of the IRS and Treasury to adopt, to the extent possible, the generally applicable rules of residence with respect to nonresident aliens. Thus, the special rule requires nonresident aliens to satisfy a mirrored version of the substantial presence test of section 7701(b) in order to meet the presence test of section 937(a)(1).

A number of commentators suggested that the IRS and Treasury should also allow U.S. citizens and residents to satisfy the 183-day rule of section 937(a)(1) by satisfying a mirrored version of the substantial presence test of section 7701(b). These comments generally argued that the 183-day rule fails to provide the flexibility necessary to reflect the realities of island life. The comments also stated that the proposed and temporary regulations subject U.S. citizens and residents to a higher presence requirement than nonresident aliens.

The final regulations do not incorporate the rules of section 7701(b) as an alternative to the 183-day rule of section 937(a)(1) for U.S. citizens and residents. Congress considered but specifically rejected adopting section 7701(b) as the general rule for determining residency in a possession. See H.R. Conf. Rep. No. 108–755, at 791–795 (2004). Instead, Congress adopted the 183-day rule and gave the Service authority to adopt appropriate exceptions to the rule to provide sufficient flexibility. The proposed and temporary regulations follow that approach and provide alternatives to the 183-day rule intended to address the necessity of off-island travel. The IRS and Treasury do not believe it is appropriate to adopt a section 7701(b) rule by regulations when Congress expressly rejected this view. Accordingly, the IRS and Treasury generally retain the approach of the proposed and temporary regulations in the final regulations but also provide additional flexibility in the application of the 183-day rule and its alternatives to meet the needs of island residents and offset differences between the rules applicable to U.S. citizens and residents and the rules applicable to nonresident aliens.

Commentators also suggested that the 183-day rule should serve as a safe harbor whereby individuals who were present in the possession for at least 183 days would not need also to satisfy the tax home and closer connection tests. The IRS and Treasury believe that this type of safe-harbor rule is inconsistent with the three-part test provided by Congress under section 937(a), which requires individuals to pass an objective presence test as well as the more subjective tax home and closer connection tests. In addition, the IRS and Treasury believe that applying the presence test in combination with the tax and closer connection tests is the most reliable method of determining whether an individual is a bona fide resident of a possession.

B. Counting Days of Presence

A number of commentators suggested that certain days an individual is not physically present in the possession nevertheless should be considered days during which the individual is present in the possession. Specifically, commentators suggested that days spent outside of the possession for medical treatment of the individual or a family member or because of a natural disaster in the possession, a family emergency, charitable pursuits, or business travel should be counted as days of presence in the possession for purposes of applying the 183-day rule. Similarly, commentators suggested that days spent in the United States for such purposes should not count as days spent in the United States under the alternatives to the 183-day rule.

In response to these comments, the final regulations liberalize the rules on counting days of presence. Consistent with the legislative history of section 937(a), the IRS and Treasury believe that it is desirable to allow for situations in which an individual's presence outside the possession is unlikely to be attributable to a tax avoidance purpose. See H.R. Conf. Rep. No. 108–755, at 791–795 (2004). Accordingly, the final regulations provide additional flexibility for certain situations involving medical conditions and natural disasters.

The proposed and temporary regulations provide that any day that an individual is prevented from leaving the United States because of a medical condition that arose while the individual was present in the United States is not treated as a day of presence in the United States for purposes of the alternatives to the 183-day rule. In response to the comments received, the final regulations provide additional flexibility for medical treatment. Under the final regulations, a temporary stay in the United States for certain documented medical treatment of the individual, or a parent, spouse or child whom the individual accompanies to the treatment, will not count as days spent in the United States for purposes of the alternatives to the 183-day rule, irrespective of where the medical condition arose. Further, such a temporary stay outside of the possession, whether in the United States, another possession or a foreign country, also will count as days of presence in the possession. Qualifying medical treatment generally involves any period of inpatient care in a hospital or hospice in the United States, and any temporary period of time spent in the United States for medically necessary inpatient care in a residential medical care facility. The final regulations focus on the place of treatment and the formal credentials of the health care provider as an objective proxy for a determination that a medical condition is serious enough to entail periods of treatment that may not be readily covered by other alternatives to the 183-day rule.

With respect to disasters, the final regulations provide that if an individual leaves, or is unable to return to, a relevant possession during (1) a two-week period within which an officially declared major disaster in the relevant possession occurs, or (2) the period in which a mandatory evacuation order applies, then the individual will not count any day during either period as a day of presence in the United States, even though the individual has evacuated to or is otherwise present in the United States. The Federal Emergency Management Agency lists officially declared major disasters on its Web site at *http://www.fema.gov/news/disasters.fema.* Furthermore, the individual may count that day (whether the individual's temporary presence was in the United States or in some other location outside the relevant possession) as a day of presence in the relevant possession even though the major disaster or mandatory evacuation order prevented the individual from being physically present in the relevant possession.

The final regulations do not adopt commentators' suggestion that days spent outside of a possession for nonmedical family emergencies, charitable pursuits or business travel should count as days spent in the possession and outside the United States. These additional exceptions would have been administratively difficult to implement and monitor. The IRS and Treasury believe that in these

situations, and in medical situations not otherwise provided for in the final regulations, the 183-day rule in combination with the alternatives to that rule, as liberalized in these final regulations, provide sufficient flexibility to accommodate absences from the possession to pursue a range of activities.

C. Permanent Connection

Under the proposed and temporary regulations, an individual may satisfy the presence test if the individual has ''no permanent connection'' to the United States during the taxable year. The proposed and temporary regulations provide a nonexclusive list of three items each of which constitutes a permanent connection. The enumerated items are a ''permanent home'' in the United States, a spouse or dependent having a principal place of abode in the United States, and current registration to vote in any political subdivision of the United States.

The IRS and Treasury believe that the term *significant connection* is more precise and accurate than the term *permanent connection.* As a result, the final regulations use the term significant connection rather than permanent connection. In addition, the IRS and Treasury have concluded that the rules of the proposed and temporary regulations should be amended in several respects.

The IRS and Treasury believe that it is not appropriate for the listing of items constituting a significant connection to be a nonexclusive list that leaves open the possibility that undefined or unspecified factors could result in a determination that an individual has a significant connection to the United States in a particular case. The significant connection test is an alternative under the presence test, which itself is fundamentally an objective standard. Section 937(a) and the regulations already provide a more subjective, facts-and-circumstances standard in the form of the closer connection test. With respect to the significant connection test, the IRS and Treasury believe that the regulations should provide certainty and that the three items enumerated in the proposed and temporary regulations are the critical significant connections. Accordingly, the final regulations adopt these items as the exclusive list of significant connections to the United States.

The proposed and temporary regulations define *permanent home* by general reference to § 301.7701(b)–2(d)(2). Commentators asserted that this definition does not provide adequate guidance as to the application of the significant connection test in the common situation of individuals who own several homes, including vacation homes. In response to these comments, the final regulations provide an exception for rental property.

With respect to a spouse or dependent whose principal place of abode is in the United States, commentators requested that an estranged spouse and a child of a noncustodial parent not be treated as a significant connection. These commentators observed that the noncustodial parent may not have any control over the place where the child resides and that a finding of significant connection in such circumstances would be inappropriate. The IRS and Treasury agree, and the final regulations exclude such children from the definition of significant connection. In addition, the final regulations provide that only minor children are the type of dependent that constitutes a significant connection. Further, the final regulations do not treat as a significant connection a minor child who resides in the United States as a student, or a spouse from whom the individual is legally separated.

D. Earned Income

The proposed and temporary regulations provide that an individual may satisfy the presence test if the individual spends more days in the possession than in the United States and has no earned income in the United States. Commentators suggested that the regulations should permit an individual to qualify under this alternative even with some *de minimis* amount of earned income in the United States. In addition, commentators suggested that income earned on any day excluded for purposes of counting days of presence in the United States under the presence test (for example, for certain medical treatment) should be excluded from earned income.

The IRS and Treasury agree that from the standpoint of practicality, fairness and administrability, *de minimis* amounts of U.S.-earned income should not render unavailable this alternative to the 183-day rule. In establishing a permitted amount of earned income for this purpose, the IRS and Treasury believe it appropriate to look to existing *de minimis* provisions of the Code involving compensation for services. In this regard, the final regulations cross-reference the maximum amount ($3,000 under current law) of compensation for labor or personal services performed in the United States that is not deemed to be income from sources within the United States under section 861(a)(3). The final regulations do not incorporate the suggestion that income earned on days excluded for purposes of counting days of presence should be excluded from earned income. The IRS and Treasury believe that this type of exclusion from earned income would be difficult to administer and could lead to abuse of this alternative, particularly given the additional flexibility provided in the final regulations with respect to days that can be excluded for purposes of counting days of presence.

Commentators also suggested that the no-U.S.-earned-income alternative to the 183-day rule should be applied by treating each state or other defined geographic area as a separate location so that the United States is not treated as a single location for purposes of determining if an individual was present for more days in the possession than in the United States under this alternative. The IRS and Treasury believe that this type of rule could be easily manipulated and difficult to administer. Further, with respect to residency determinations, the Code typically treats the United States as a single location. Therefore, the final regulations do not adopt this suggestion.

II. Tax Home Test

Sections 931, 932, 933 and 935 generally apply to an individual who is considered a bona fide resident of the respective possession under Code section 937(a) for the entire taxable year. The proposed and temporary regulations treat an individual as a bona fide resident of a possession for the entire taxable year only if the individual satisfies the presence, tax home, and closer connection tests for the taxable year.

Commentators suggested that it may be difficult for an individual moving to a possession during a taxable year to satisfy the tax home test if the individual had a regular or principal place of business in the United States or a closer connection to the United States for the portion of the year prior to the date of the move to the possession. These commentators suggested that individuals should be able to prorate their income for the taxable year of the move in accordance with the portion of the year for which they satisfy the tax home test.

The IRS and Treasury agree that special rules are appropriate for the year of a move to a possession and believe that similar rules are appropriate for the year of a move out of a possession. However, the IRS and Treasury do not believe that general statutory authority exists for the proration of a taxpayer's income for the taxable year in this

context. Only in the case of Puerto Rico does the Code expressly allow for prorating income according to periods of residency, and then only when an individual moves out of Puerto Rico. See section 933(2). Sections 931, 932 and 935 contain no analogous proration provisions. As a result, except for a special rule applicable to certain individuals who move from Puerto Rico, the final regulations do not provide proration rules.

Instead, the final regulations adopt a standard whereby an individual moving to a possession during the taxable year generally will satisfy the tax home test if the individual does not have a tax home outside that possession during any part of the last 183 days of that taxable year. To prevent abuse of this special rule, the regulations further require in order to use the rule that the individual not have been a bona fide resident of the relevant possession during the three taxable years before the move and that the individual continue to qualify as a bona fide resident of the possession for the three taxable years following the year of the move. Corresponding rules will apply to the taxable year in which an individual moves from a possession. However, reflecting that section 933(2) provides for proration of a U.S. citizen's income with respect to bona fide residents who move from Puerto Rico, the final regulations provide a special rule that allows qualifying individuals to be treated as bona fide residents for the part of the year before they move from Puerto Rico.

Under the tax home test, the proposed and temporary regulations provide a special rule applicable to seafarers. The special rule prevents an individual from being considered to have a tax home outside a particular possession solely by reason of employment on a ship or other seafaring vessel that is used predominantly in local and international waters. As set forth in the proposed and temporary regulations, the special rule does not specify how to treat time that the ship spends in waters of another possession. The final regulations clarify that time spent in the waters of another possession is treated the same as time spent in the waters of the United States or a foreign country. Thus, under the final regulations, a ship is considered to be used predominantly in local or international waters if the total time it is used in local and international waters during a taxable year exceeds the total time it is used in the territorial waters of the United States, another possession, and any foreign country.

See section V of this preamble for an explanation of the transition rule concerning the effective date of the tax home test.

III. Closer Connection Test

Under section 937(a)(2), in order to be a bona fide resident of a possession, a person must not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to the relevant possession. The regulations under section 7701(b)(3)(B)(ii) provide a facts-and-circumstances test to determine whether an individual has a closer connection with the United States or with a foreign country. This facts-and-circumstances test provides a nonexclusive list of factors to be taken into consideration. See § 301.7701(b)–2(d). The proposed and temporary regulations under section 937 apply the principles of and factors provided in § 301.7701(b)–2(d) in determining whether an individual meets the closer connection test of section 937.

Commentators suggested that the final regulations designate certain factors as primary and others as secondary, thereby indicating the relative weight of the factors listed in § 301.7701(b)–2(d). Alternatively, commentators requested that the final regulations indicate that an individual who meets a majority of factors establishes a closer connection. Some commentators criticized Example 6 under § 1.937–1T(f) (the closer connection example) for failing to take into account all factors listed in § 301.7701(b)–2(d) and for not providing an analysis of how the example concludes that the individual fails to satisfy the closer connection test. These commentators appeared to believe that the closer connection example suggests that the location of an individual's spouse and children is more important than other factors or even is determinative of whether the individual has a closer connection to the United States or the possession. Some commentators also seemed to confuse these factors with the permanent connection alternative to the presence test and believed that the closer connection test requires an individual's spouse and dependent children also to reside in the possession. Commentators noted that if it applied, this requirement would apparently conflict with the joint filing rule of section 932(d).

The closer connection test is a facts-and-circumstances test. The very nature of the test does not allow for weighting of factors because a factor with respect to one set of facts and circumstances may be less important than with respect to another set of facts and circumstances. Because the test must be applied to a wide variety of individual situations, the final regulations do not designate specific factors as primary, adopt a weighting of factors, or adopt a rule that counts a majority of the factors to determine closer connection. Further, because the list in § 301.7701(b)–2(d) is not exclusive, other factors, including, for example, whether the individual was born and raised in the relevant possession, may be considered in the determination. The final regulations amend Example 6 to demonstrate that all factors (including any factors important in a particular case but not on the nonexclusive list) must be considered in determining an individual's closer connection.

Although the location of the individual's family is often a very important factor, it is one of many factors to be evaluated qualitatively under the facts-and-circumstances test, and in a particular case it may not be an important or overriding factor. Thus, unlike the no-significant-connection alternative (previously the no-permanent-connection alternative) to the presence test, the closer connection test can be satisfied, depending on an individual's particular facts and circumstances, even if, for example, the individual's spouse resides in the United States. In addition, Congress provided in section 937(a) that individuals must satisfy the closer connection test to establish bona fide residency in a possession notwithstanding the statutory joint filing rule provided in section 932(d). For these reasons, the regulations under section 937 do not conflict with section 932(d).

The proposed and temporary regulations require that an individual satisfy the closer connection test for the entire taxable year in order to be considered a bona fide resident of a relevant possession. Commentators noted that, as with the tax home test, it may be difficult for an individual moving into a possession during a taxable year to satisfy the closer connection test for the entire taxable year. Accordingly, the final regulations provide special year-of-move rules under the closer connection test similar to those described in section II of this preamble (relating to the tax home test).

The final regulations make clarifying amendments to the closer connection test. Section 1.937–1T(e)(2) of the proposed and temporary regulations specifies that another possession is not considered a foreign country for purposes of the closer connection test. The final regulations do not specify this

because a special rule distinguishing possessions from foreign countries is unnecessary and potentially confusing. In the absence of an explicit provision, possessions are not treated as foreign countries under the Code or Treasury Regulations. The final regulations also clarify that an individual's connections to the United States and foreign countries are considered in the aggregate, rather than on a country-by-country basis, when comparing those connections with the individual's connections to the relevant possession.

See section V of this preamble for an explanation of the transition rule concerning the effective date of the closer connection test.

IV. Withholding Tax Exceptions for Certain Possessions Corporations

Section 881(b) provides exemptions from, or reductions of, withholding tax and branch profits tax on certain U.S.-source income received by corporations organized in U.S. possessions. As one of the conditions for such treatment in certain cases, section 881(b)(1)(C) sets forth a ''base-erosion'' test requiring that no substantial part of the possessions corporation's income be used to satisfy obligations to ''persons'' who are not bona fide residents of such a possession or of the United States. Section 937(a) provides in relevant part that for purposes of section 881(b), except as provided in regulations, a ''person'' is a bona fide resident if the person satisfies the requirements of section 937(a). For purposes of the base-erosion test, § 1.881–5T(f)(4)(i) defines a bona fide resident of a possession by reference to § 1.937–1T, which provides that only a natural person, rather than a juridical person, may qualify as a bona fide resident of a possession. Similarly, § 1.881–5T(f)(4)(ii) defines bona fide residents of the United States for purposes of the base-erosion test as including only certain individuals who are citizens or residents of the United States.

Commentators observed that the interaction of these rules in the proposed and temporary regulations could result in disqualifying income from the withholding tax exceptions in any situation where the possessions corporation makes payments to satisfy obligations to persons other than individuals. These commentators further noted that many common business arrangements would run afoul of the base-erosion test if corporations cannot constitute bona fide residents.

The IRS and Treasury agree that such results would be undesirable and unintended. In the context of section 881(b), the IRS and Treasury believe that the statutory terms *persons* and *bona fide residents* should not be interpreted as limited to individuals. Accordingly, the final regulations additionally provide that a corporation, or a business association that is treated as a corporation for tax purposes, may qualify as a bona fide resident of a relevant possession or the United States for purposes of the base-erosion test if it is created or organized in that jurisdiction. The final regulations reflect that section 937(a) and the regulations under that section are intended to apply only to individuals in determining whether a person is a bona fide resident of a possession within the meaning of section 881(b)(1)(C).

Note that the IRS and Treasury believe that the words ''direct or indirect'' in section 881(b)(1)(C) (and § 1.881–5(c)(3)) would authorize an anti-abuse rule that prohibits payments to possessions corporations that are a part of back-to-back loan arrangements or other base erosion schemes. Accordingly, the IRS and Treasury are strongly considering including such an anti-abuse rule when finalizing the remaining proposed and temporary regulations under section 881(b). It is expected that any such anti-abuse rule would be retroactive to January 31, 2006.

Commentators also proposed that the final regulations adopt a special rule whereby publicly traded corporations may qualify for favorable tax treatment without regard to the conditions under section 881(b)(1), including the base-erosion test. A similar rule is provided under section 884(e)(4)(B) and § 1.884–5(d) under the branch profits tax. However, the final regulations do not adopt such a special rule in this context. The IRS and Treasury note that section 881(b) does not grant authority to depart from the statutory conditions of section 881(b)(1), including the base-erosion test.

V. Effective Date

The proposed and temporary regulations are generally effective for tax years ending after October 22, 2004. Consistent with the effective date of section 937(a), the proposed and temporary regulations provide a transition rule that delays the effective date of the presence test until tax years beginning after October 22, 2004 (tax year 2005 for calendar year taxpayers). A number of commentators suggested that the final regulations should provide a similar transition rule with respect to the effective date of the tax home and closer connection tests so that the prior-law, facts-and-circumstances test continues to apply through tax years beginning on or before October 22, 2004.

The IRS and Treasury believe that it is appropriate to provide a transition rule with respect to the tax home and closer connection tests consistent with the effective date of the presence test. The effective date of the final regulations reflects the fact that most taxpayers already will have filed their income tax returns for taxable year 2004. As a result, this transition rule is elective so that taxpayers may apply at their option the prior-law test for determining residency.

Under section 937(a), an individual's tax home outside the relevant possession conclusively forecloses bona fide residency in the possession, rather than being one of a number of facts and circumstances that are considered under the prior-law test. However, in most instances the outcome of the residency determination under prior law should be the same as with the application of the section 937(a) tax home and closer connection tests because individuals are required to demonstrate similar factors to support claims that they are bona fide residents of a particular possession. See, e.g., *Sochurek* v. *Commissioner*, 300 F.2d 34, 38 (7th Cir. 1962) (enumerating representative factors), and *Bergersen* v. *Commissioner*, 109 F.3d 56, 61–62 (1st Cir. 1997), aff'g T.C. Memo 1995–424 (applying prior-law facts-and-circumstances test in same way closer connection test is applied by ''taking account of all of the [taxpayers'] ties to both places'' to determine residency under principles of §§ 1.871–2 through 1.871–5). The optional effective date for the tax home and closer connection tests is intended to create symmetry with the effective date of the presence test. No inference is intended or may be drawn from this transition rule as to the result under prior law.

VI. Miscellaneous Changes

Consistent with section 937(a), the final regulations specify that the residency rules apply for purposes of the income tax and certain other enumerated provisions of the Code. With respect to the estate and gift taxes, see §§ 20.2209–1 and 25.2501–1(d).

The final regulations also reflect various nonsubstantive stylistic edits to the proposed and temporary regulations to enhance clarity and readability.

VII. Mutual Agreement Procedures

In the application of the operative provisions of the Code relating to possessions, for example sections 931 through 935, section 937(a) and the final regulations govern whether an individual is a bona fide resident of a

particular possession. A commentator observed that there is a possibility that the IRS and the taxing authority of a particular possession might reach different conclusions with respect to certain determinations, including residency, when administering their respective income tax laws. In such cases, taxpayers are advised that mutual agreement procedures are available. For procedures to request the assistance of the IRS when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a possession tax agency, see Revenue Procedure 89–8 (1989–1 C.B. 778).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is J. David Varley, Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.931–1T also issued under 26 U.S.C. 7654(e).

Section 1.932–1T also issued under 26 U.S.C. 7654(e).

Section 1.935–1T also issued under 26 U.S.C. 7654(e). * * *

Section 1.937–1 also issued under 26 U.S.C. 937(a). * * *

■ **Par. 2.** Section 1.881–5 is added to read as follows:

§ 1.881–5 Exception for certain possessions corporations.

(a) through (f)(3) [Reserved]. For more information, see § 1.881–5T(a) through (f)(3).

(f)(4) *Bona fide resident*—

(i) With respect to a particular possession, means—

(A) An individual who is a bona fide resident of the possession as defined in § 1.937–1; or

(B) A business entity organized under the laws of the possession and taxable as a corporation in the possession; and

(ii) With respect to the United States, means—

(A) An individual who is a citizen or resident of the United States (as defined under section 7701(b)(1)(A)); or

(B) A business entity organized under the laws of the United States or any State that is classified as a corporation for Federal tax purposes under § 301.7701–2(b) of this chapter.

(5) through (7) [Reserved]. For more information, see § 1.881–5T(f)(5) through (7).

(8) *Effective date.* This section applies to payments made after January 31, 2006. However, taxpayers may choose to apply this section to all payments made after October 22, 2004 for which the statute of limitations under section 6511 is open.

(g) through (i) [Reserved]. For more information, see § 1.881–5T(g) through (i).

■ **Par. 3.** In § 1.881–5T, paragraph (f)(4) is revised to read as follows:

§ 1.881–5T Exception for certain possessions corporations (temporary).

* * * * *

(f)(4) [Reserved]. For more information, see § 1.881–5(f)(4).

* * * * *

§ 1.931–1T [Amended]

■ **Par. 4.** In § 1.931–1T, paragraph (a)(2) is amended by removing and reserving the example.

§ 1.932–1T [Amended]

■ **Par. 5.** In § 1.932–1T, paragraph (i) is amended by removing and reserving example 2.

§ 1.933–1T [Amended]

■ **Par. 6.** In § 1.933–1T, paragraph (a)(2) is amended by removing and reserving the example.

§ 1.935–1T [Amended]

■ **Par. 7.** In § 1.935–1T, paragraph (f) is amended by removing and reserving examples 1 and 2.

■ **Par. 8.** Section 1.937–1 is added to read as follows:

§ 1.937–1 Bona fide residency in a possession.

(a) *Scope*—(1) *In general.* Section 937(a) and this section set forth the rules for determining whether an individual qualifies as a bona fide resident of a particular possession (the relevant possession) for purposes of subpart D, part III, Subchapter N, Chapter 1 of the Internal Revenue Code as well as section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a).

(2) *Definitions.* For purposes of this section and §§ 1.937–2 and 1.937–3—

(i) *Possession* means one of the following United States possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands. When used in a geographical sense, the term comprises only the territory of each such possession (without application of sections 932(c)(3) and 935(c)(2) (as in effect before the effective date of its repeal)).

(ii) *United States*, when used in a geographical sense, is defined in section 7701(a)(9), and without application of sections 932(a)(3) and 935(c)(1) (as in effect before the effective date of its repeal).

(b) *Bona fide resident*—(1) *General rule.* An individual qualifies as a bona fide resident of the relevant possession if such individual satisfies the requirements of paragraphs (c) through (e) of this section with respect to such possession.

(2) *Special rule for members of the Armed Forces.* A member of the Armed Forces of the United States who qualified as a bona fide resident of the relevant possession in a prior taxable year is deemed to have satisfied the requirements of paragraphs (c) through (e) of this section for a subsequent taxable year if such individual otherwise is unable to satisfy such requirements by reason of being absent from such possession or present in the United States during such year solely in compliance with military orders. Conversely, a member of the Armed Forces of the United States who did not

qualify as a bona fide resident of the relevant possession in a prior taxable year is not considered to have satisfied the requirements of paragraphs (c) through (e) of this section for a subsequent taxable year by reason of being present in such possession solely in compliance with military orders. *Armed Forces of the United States* is defined (and members of the Armed Forces are described) in section 7701(a)(15).

(3) *Juridical persons*. Except as provided in § 1.881–5(f):

(i) Only natural persons may qualify as bona fide residents of a possession; and

(ii) The rules governing the tax treatment of bona fide residents of a possession do not apply to juridical persons (including corporations, partnerships, trusts, and estates).

(4) *Transition rule*. For taxable years beginning before October 23, 2004, and ending after October 22, 2004, an individual is considered to qualify as a bona fide resident of the relevant possession if that individual would be a bona fide resident of the relevant possession by applying the principles of §§ 1.871–2 through 1.871–5.

(5) *Special rule for cessation of bona fide residence in Puerto Rico*. See paragraph (f)(2)(ii) of this section for a special rule applicable to a citizen of the United States who ceases to be a bona fide resident of Puerto Rico during a taxable year.

(c) *Presence test*—(1) *In general*. A United States citizen or resident alien individual (as defined in section 7701(b)(1)(A)) satisfies the requirements of this paragraph (c) for a taxable year if during that taxable year that individual—

(i) Was present in the relevant possession for at least 183 days;

(ii) Was present in the United States for no more than 90 days;

(iii) Had earned income (as defined in § 1.911–3(b)) in the United States, if any, not exceeding in the aggregate the amount specified in section 861(a)(3)(B) and was present for more days in the relevant possession than in the United States; or

(iv) Had no significant connection to the United States. See paragraph (c)(5) of this section.

(2) *Special rule for alien individuals*. A nonresident alien individual (as defined in section 7701(b)(1)(B)) satisfies the requirements of this paragraph (c) for a taxable year if during that taxable year that individual satisfies the substantial presence test of § 301.7701(b)–1(c) of this chapter (except for the substitution of the name of the relevant possession for the term *United States* where appropriate).

(3) *Days of presence*. For purposes of paragraph (c)(1) of this section—

(i) An individual is considered to be present in the relevant possession on:

(A) Any day that the individual is physically present in that possession at any time during the day;

(B) Any day that an individual is outside of the relevant possession to receive, or to accompany on a full-time basis a parent, spouse, or child (as defined in section 152(f)(1)) who is receiving, qualifying medical treatment as defined in paragraph (c)(4) of this section; and

(C) Any day that an individual is outside the relevant possession because the individual leaves or is unable to return to the relevant possession during any—

(*1*) 14-day period within which a major disaster occurs in the relevant possession for which a Federal Emergency Management Agency Notice of a Presidential declaration of a major disaster is issued in the **Federal Register**; or

(*2*) Period for which a mandatory evacuation order is in effect for the geographic area in the relevant possession in which the individual's place of abode is located.

(ii) An individual is considered to be present in the United States on any day that the individual is physically present in the United States at any time during the day. Notwithstanding the preceding sentence, the following days will not count as days of presence in the United States:

(A) Any day that an individual is temporarily present in the United States under circumstances described in paragraph (c)(3)(i)(B) or (C) of this section;

(B) Any day that an individual is in transit between two points outside the United States (as described in § 301.7701(b)–3(d) of this chapter), and is physically present in the United States for fewer than 24 hours;

(C) Any day that an individual is temporarily present in the United States as a professional athlete to compete in a charitable sports event (as described in § 301.7701(b)–3(b)(5) of this chapter);

(D) Any day that an individual is temporarily present in the United States as a student (as defined in section 152(f)(2)); and

(E) In the case of an individual who is an elected representative of the relevant possession, or who serves full time as an elected or appointed official or employee of the government of the relevant possession (or any political subdivision thereof), any day spent serving the relevant possession in that role.

(iii) If, during a single day, an individual is physically present—

(A) In the United States and in the relevant possession, that day is considered a day of presence in the relevant possession;

(B) In two possessions, that day is considered a day of presence in the possession where the individual's tax home is located (applying the rules of paragraph (d) of this section).

(4) *Qualifying medical treatment*—(i) *In general*. The term *qualifying medical treatment* means medical treatment provided by (or under the supervision of) a physician (as defined in section 213(d)(4)) for an illness, injury, impairment, or physical or mental condition that satisfies the documentation and production requirements of paragraph (c)(4)(iii) of this section and that involves—

(A) Any period of inpatient care in a hospital or hospice and any period immediately before or after that inpatient care to the extent it is medically necessary; or

(B) Any temporary period of inpatient care in a residential medical care facility for medically necessary rehabilitation services;

(ii) *Inpatient care*. The term *inpatient care* means care requiring an overnight stay in a hospital, hospice, or residential medical care facility, as the case may be.

(iii) *Documentation and production requirements*. In order to satisfy the documentation and production requirements of this paragraph, an individual must, with respect to each qualifying medical treatment, prepare (or obtain), maintain, and, upon a request by the Commissioner (or the person responsible for tax administration in the relevant possession), make available within 30 days of such request:

(A) Records that provide—

(*1*) The patient's name and relationship to the individual (if the medical treatment is provided to a person other than the individual);

(*2*) The name and address of the hospital, hospice, or residential medical care facility where the medical treatment was provided;

(*3*) The name, address, and telephone number of the physician who provided the medical treatment;

(*4*) The date(s) on which the medical treatment was provided; and

(*5*) Receipt(s) of payment for the medical treatment;

(B) Signed certification by the providing or supervising physician that the medical treatment was qualified medical treatment within the meaning

of paragraph (c)(4)(i) of this section, and setting forth—

(*1*) The patient's name;

(*2*) A reasonably detailed description of the medical treatment provided by (or under the supervision of) the physician;

(*3*) The dates on which the medical treatment was provided; and

(*4*) The medical facts that support the physician's certification and determination that the treatment was medically necessary; and

(C) Such other information as the Commissioner may prescribe by notice, form, instructions, or other publication (see § 601.601(d)(2) of this chapter).

(5) *Significant connection.* For purposes of paragraph (c)(1)(iv) of this section—

(i) The term *significant connection to the United States* means—

(A) A permanent home in the United States;

(B) Current registration to vote in any political subdivision of the United States; or

(C) A spouse or child (as defined in section 152(f)(1)) who has not attained the age of 18 whose principal place of abode is in the United States other than—

(*1*) A child who is in the United States because the child is living with a custodial parent under a custodial decree or multiple support agreement; or

(*2*) A child who is in the United States as a student (as defined in section 152(f)(2)).

(ii) *Permanent home*—(A) *General rule.* For purposes of paragraph (c)(5)(i)(A) of this section, except as provided in paragraph (c)(5)(ii)(B) of this section, the term *permanent home* has the same meaning as in § 301.7701(b)–2(d)(2) of this chapter.

(B) *Exception for rental property.* If an individual or the individual's spouse owns property and rents it to another person at any time during the taxable year, then notwithstanding that the rental property may constitute a permanent home under § 301.7701(b)–2(d)(2) of this chapter, it is not a permanent home under this paragraph (c)(5)(ii) unless the taxpayer uses any portion of it as a residence during the taxable year under the principles of section 280A(d). In applying the principles of section 280A(d) for this purpose, an individual is treated as using the rental property for personal purposes on any day determined under the principles of section 280A(d)(2) or on any day that the rental property (or any portion of it) is not rented to another person at fair rental for the entire day. The rental property is not used for personal purposes on any day on which the principal purpose of the use of the rental property is to perform repair or maintenance work on the property. Whether the principal purpose of the use of the rental property is to perform repair or maintenance work is determined in light of all the facts and circumstances including, but not limited to, the following: The amount of time devoted to repair and maintenance work, the frequency of the use for repair and maintenance purposes during a taxable year, and the presence and activities of companions.

(iii) For purposes of this paragraph (c)(5), the term *spouse* does not include a spouse from whom the individual is legally separated under a decree of divorce or separate maintenance.

(d) *Tax home test*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, an individual satisfies the requirements of this paragraph (d) for a taxable year if that individual did not have a tax home outside the relevant possession during any part of the taxable year. For purposes of section 937 and this section, an individual's tax home is determined under the principles of section 911(d)(3) without regard to the second sentence thereof. Thus, under section 937, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of the business, or because the individual is not engaged in carrying on any trade or business within the meaning of section 162(a), then the individual's tax home is the individual's regular place of abode in a real and substantial sense.

(2) *Exceptions*—(i) *Year of move.* See paragraph (f) of this section for a special rule applicable to an individual who becomes or ceases to be a bona fide resident of the relevant possession during a taxable year.

(ii) *Special rule for seafarers.* For purposes of section 937 and this section, an individual is not considered to have a tax home outside the relevant possession solely by reason of employment on a ship or other seafaring vessel that is predominantly used in local and international waters. For this purpose, a vessel is considered to be predominantly used in local and international waters if, during the taxable year, the aggregate amount of time it is used in international waters and in the waters within three miles of the relevant possession exceeds the aggregate amount of time it is used in the territorial waters of the United States, another possession, and a foreign country.

(iii) *Special rule for students and government officials.* Any days described in paragraphs (c)(3)(ii)(D) and (E) of this section are disregarded for purposes of determining whether an individual has a tax home outside the relevant possession under paragraph (d)(1) of this section during any part of the taxable year.

(e) *Closer connection test*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, an individual satisfies the requirements of this paragraph (e) for a taxable year if that individual did not have a closer connection to the United States or a foreign country than to the relevant possession during any part of the taxable year. For purposes of this paragraph (e)—

(i) The principles of section 7701(b)(3)(B)(ii) and § 301.7701(b)–2(d) of this chapter apply (without regard to the final sentence of § 301.7701(b)–2(b) of this chapter); and

(ii) An individual's connections to the relevant possession are compared to the aggregate of the individual's connections with the United States and foreign countries.

(2) *Exception for year of move.* See paragraph (f) of this section for a special rule applicable to an individual who becomes or ceases to be a bona fide resident of the relevant possession during a taxable year.

(f) *Year of move*—(1)*Move to a possession.* For the taxable year in which an individual's residence changes to the relevant possession, the individual satisfies the requirements of paragraphs (d)(1) and (e)(1) of this section if—

(i) For each of the 3 taxable years immediately preceding the taxable year of the change of residence, the individual is not a bona fide resident of the relevant possession;

(ii) For each of the last 183 days of the taxable year of the change of residence, the individual does not have a tax home outside the relevant possession or a closer connection to the United States or a foreign country than to the relevant possession; and

(iii) For each of the 3 taxable years immediately following the taxable year of the change of residence, the individual is a bona fide resident of the relevant possession.

(2) *Move from a possession*—(i) *General rule.* Except for a bona fide resident of Puerto Rico to whom § 1.933–1(b) and paragraph (f)(2)(ii) of this section apply, for the taxable year in which an individual ceases to be a bona fide resident of the relevant possession, the individual satisfies the

requirements of paragraphs (d)(1) and (e)(1) of this section if—

(A) For each of the 3 taxable years immediately preceding the taxable year of the change of residence, the individual is a bona fide resident of the relevant possession;

(B) For each of the first 183 days of the taxable year of the change of residence, the individual does not have a tax home outside the relevant possession or a closer connection to the United States or a foreign country than to the relevant possession; and

(C) For each of the 3 taxable years immediately following the taxable year of the change of residence, the individual is not a bona fide resident of the relevant possession.

(ii) *Year of move from Puerto Rico.* Notwithstanding an individual's failure to satisfy the presence, tax home, or closer connection test prescribed under paragraph (b)(1) of this section for the taxable year, the individual is a bona fide resident of Puerto Rico for that part of the taxable year described in paragraph (f)(2)(ii)(E) of this section if the individual—

(A) Is a citizen of the United States;

(B) Is a bona fide resident of Puerto Rico for a period of at least 2 taxable years immediately preceding the taxable year;

(C) Ceases to be a bona fide resident of Puerto Rico during the taxable year;

(D) Ceases to have a tax home in Puerto Rico during the taxable year; and

(E) Has a closer connection to Puerto Rico than to the United States or a foreign country throughout the part of the taxable year preceding the date on which the individual ceases to have a tax home in Puerto Rico.

(g) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. Presence test. W, a U.S. citizen, lives for part of the taxable year in a condominium, which she owns, located in Possession P. W also owns a house in State N where she lives for 120 days every year to be near her grown children and grandchildren. W is retired and her income consists solely of pension payments, dividends, interest, and Social Security benefits. For 2006, W is only present in Possession P for a total of 175 days because of a 70-day vacation to Europe and Asia. Thus, for taxable year 2006, W is not present in Possession P for at least 183 days, is present in the United States for more than 90 days, and has a significant connection to the United States by reason of her permanent home. However, under paragraph (c)(1)(iii) of this section, W still satisfies the presence test of paragraph (c) of this section with respect to Possession P because she has no earned income in the United States and is present for more days in Possession P than in the United States.

Example 2. Presence test. T, a U.S. citizen, was born and raised in State A, where his mother still lives in the house in which T grew up. T is a sales representative for a company based in Possession V. T lives with his wife and minor children in their house in Possession V. T is registered to vote in Possession V and not in the United States. In 2006, T spends 120 days in State A and another 120 days in foreign countries. When traveling on business to State A, T often stays at his mother's house in the bedroom he used when he was a child. T's stays are always of short duration, and T asks for his mother's permission before visiting to make sure that no other guests are using the room and that she agrees to have him as a guest in her house at that time. Therefore, under paragraph (c)(5)(ii) of this section, T's mother's house is not a permanent home of T. Assuming that no other accommodations in the United States constitute a permanent home with respect to T, then under paragraphs (c)(1)(iv) and (c)(5) of this section, T has no significant connection to the United States. Accordingly, T satisfies the presence test of paragraph (c) of this section for taxable year 2006.

Example 3. Alien resident of possession—presence test. F is a citizen of Country G. F's tax home is in Possession C and F has no closer connection to the United States or a foreign country than to Possession C. F is present in Possession C for 123 days and in the United States for 110 days every year. Accordingly, F is a nonresident alien with respect to the United States under section 7701(b), and a bona fide resident of Possession C under paragraphs (b), (c)(2), (d), and (e) of this section.

Example 4. Seafarers— tax home. S, a U.S. citizen, is employed by a fishery and spends 250 days at sea on a fishing vessel in 2006. When not at sea, S resides with his wife at a house they own in Possession G. The fishing vessel upon which S works departs and arrives at various ports in Possession G, other possessions, and foreign countries, but is in international and local waters (within the meaning of paragraph (d)(2) of this section) for 225 days in 2006. Under paragraph (d)(2) of this section, for taxable year 2006, S will not be considered to have a tax home outside Possession G for purposes of section 937 and this section solely by reason of S's employment on board the fishing vessel.

Example 5. Seasonal workers—tax home and closer connection. P, a U.S. citizen, is a permanent employee of a hotel in Possession I, but works only during the tourist season. For the remainder of each year, P lives with her husband and children in Possession Q, where she has no outside employment. Most of P's personal belongings, including her automobile, are located in Possession Q. P is registered to vote in, and has a driver's license issued by, Possession Q. P does her personal banking in Possession Q and P routinely lists her address in Possession Q as her permanent address on forms and documents. P satisfies the presence test of paragraph (c) of this section with respect to both Possession Q and Possession I, because, among other reasons, under paragraph (c)(1)(ii) of this section she does not spend more than 90 days in the United States during the taxable year. P satisfies the tax home test of paragraph (d) of this section only with respect to Possession I, because her regular place of business is in Possession I. P satisfies the closer connection test of paragraph (e) of this section with respect to both Possession Q and Possession I, because she does not have a closer connection to the United States or to any foreign country (and possessions generally are not treated as foreign countries). Therefore, P is a bona fide resident of Possession I for purposes of the Internal Revenue Code.

Example 6. Closer connection to United States than to possession. Z, a U.S. citizen, relocates to Possession V in a prior taxable year to start an investment consulting and venture capital business. Z's wife and two teenage children remain in State C to allow the children to complete high school. Z travels back to the United States regularly to see his wife and children, to engage in business activities, and to take vacations. He has an apartment available for his full-time use in Possession V, but he remains a joint owner of the residence in State C where his wife and children reside. Z and his family have automobiles and personal belongings such as furniture, clothing, and jewelry located at both residences. Although Z is a member of the Possession V Chamber of Commerce, Z also belongs to and has current relationships with social, political, cultural, and religious organizations in State C. Z receives mail in State C, including brokerage statements, credit card bills, and bank advices. Z conducts his personal banking activities in State C. Z holds a State C driver's license and is registered to vote in State C. Based on the totality of the particular facts and circumstances pertaining to Z, Z is not a bona fide resident of Possession V because he has a closer connection to the United States than to Possession V and therefore fails to satisfy the requirements of paragraphs (b)(1) and (e) of this section.

Example 7. Year of move to possession. D, a U.S. citizen, files returns on a calendar year basis. From January 2003 through May 2006, D resides in State R. In June 2006, D moves to Possession N, purchases a house, and accepts a permanent position with a local employer. D's principal place of business from July 1 through December 31, 2006 is in Possession N, and during that period (which totals at least 183 days) D does not have a closer connection to the United States or a foreign country than to Possession N. For the remainder of 2006, and throughout years 2007 through 2009, D continues to live and work in Possession N and maintains a closer connection to Possession N than to the United States or any foreign country. D satisfies the tax home and closer connection tests for 2006 under paragraphs (d)(2), (e)(2), and (f)(1) of this section. Accordingly, assuming that D also satisfies the presence test in paragraph (c) of this section, D is a bona fide resident of Possession N for all of taxable year 2006.

Example 8. Year of move from possession (other than Puerto Rico). J, a U.S. citizen, files returns on a calendar year basis. From January 2007 through December 2009, J is a bona fide resident of Possession C because

she satisfies the requirements of paragraph (b)(1) of this section for each year. J continues to reside in Possession C until September 6, 2010, when she accepts new employment and moves to State H. J's principal place of business from January 1 through September 5, 2010 is in Possession C, and during that period (which totals at least 183 days) J does not have a closer connection to the United States or a foreign country than to Possession C. For the remainder of 2010 and throughout years 2011 through 2013, D continues to live and work in State H and is not a bona fide resident of Possession C. J satisfies the tax home and closer connection tests for 2010 with respect to Possession C under paragraphs (d)(2)(i), (e)(2), and (f)(2)(i) of this section. Accordingly, assuming that J also satisfies the presence test of paragraph (c) of this section, J is a bona fide resident of Possession C for all of taxable year 2010.

Example 9. Year of move from Puerto Rico. R, a U.S. citizen who files returns on a calendar year basis satisfies the requirements of paragraphs (b) through (e) of this section for years 2006 and 2007. From January through April 2008, R continues to reside and maintain his principal place of business in and closer connection to Puerto Rico. On May 5, 2008, R moves and changes his principal place of business (tax home) to State N and later that year establishes a closer connection to the United States than to Puerto Rico. R does not satisfy the presence test of paragraph (c) for 2008 with respect to Puerto Rico. Moreover, because R had a tax home outside of Puerto Rico and establishes a closer connection to the United States in 2008, R does not satisfy the requirements of paragraph (d)(1) or (e)(1) of this section for 2008. However, because R was a bona fide resident of Puerto Rico for at least two taxable years before his change of residence to State N in 2008, he is a bona fide resident of Puerto Rico from January 1 through May 4, 2008 under paragraphs (b)(5) and (f)(2)(ii) of this section. See section 933(2) and § 1.933–1(b) for rules on attribution of income.

(h) *Information reporting requirement.* The following individuals are required to file notice of their new tax status in such time and manner as the Commissioner may prescribe by notice, form, instructions, or other publication (see § 601.601(d)(2) of this chapter):

(1) Individuals who take the position for U.S. tax reporting purposes that they qualify as bona fide residents of a possession for a tax year subsequent to a tax year for which they were required to file Federal income tax returns as citizens or residents of the United States who did not so qualify.

(2) Citizens and residents of the United States who take the position for U.S. tax reporting purposes that they do not qualify as bona fide residents of a possession for a tax year subsequent to a tax year for which they were required to file income tax returns (with the Internal Revenue Service, the tax authorities of a possession, or both) as individuals who did so qualify.

(3) Bona fide residents of Puerto Rico or a section 931 possession (as defined in § 1.931–1T(c)(1)) who take a position for U.S. tax reporting purposes that they qualify as bona fide residents of that possession for a tax year subsequent to a tax year for which they were required to file income tax returns as bona fide residents of the United States Virgin Islands or a section 935 possession (as defined in § 1.935–1T(a)(3)(i)).

(i) *Effective date.* Except as provided in this paragraph (i), this section applies to taxable years ending after January 31, 2006. Paragraph (h) of this section also applies to a taxpayer's 3 taxable years immediately preceding the taxpayer's first taxable year ending after October 22, 2004. Taxpayers also may choose to apply this section in its entirety to all taxable years ending after October 22, 2004 for which the statute of limitations under section 6511 is open.

§ 1.937–1T [Removed]

■ **Par. 9.** Section 1.937–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 10.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 11.** In § 602.101, paragraph (b) is amended by removing the entry for ''1.937–1T'' and adding a new entry for ''1.937–1'' in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.937–1	1545–1930
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: January 20, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–818 Filed 1–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[Docket No. IA–015–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed to amend its rules regarding its small operator assistance program. Iowa intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning Iowa's program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Amendment

By letter dated August 19, 2005 (Administrative Record No. IA–450), the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (IDSC) sent us a copy of the coal mine rules that it had adopted on March 30, 2005. Included in the adopted rules were changes to Iowa Administrative Code (IAC) 27–40.41(207) regarding Iowa's small operator assistance program that we had not previously approved. Iowa proposed the changes in response to a required program amendment at 30 CFR 915.16(b) that we codified on June 1, 2004 (69 FR 30821).

We announced receipt of the amendment in the October 18, 2005, **Federal Register** (70 FR 60478). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 17, 2005. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

IAC 27–40.41(207) Permanent Regulatory Program—Small Operator Assistance Program

On June 1, 2004 (69 FR 30821), we codified a required program amendment at 30 CFR 915.16(b). We required Iowa to revise Iowa Code section 207.4(1)(d) to include the revisions that were made to section 507(c)(1) of SMCRA on November 5, 1990, and October 24, 1992, before implementing its rule at IAC 27–40.41(207). The revisions to SMCRA changed the eligibility requirements for small operator assistance program participation by (1) increasing probable total annual production of coal from all locations of a coal surface mining operation from 100,000 tons to 300,000 tons and (2) increasing the types of technical services that are eligible for funding. The Federal regulations at 30 CFR 795.6(a)(2) and 795.9(b)(3) through 795.9(b)(6) implement the revisions made to section 507(c)(1) of SMCRA. In response to our required amendment, Iowa proposed to incorporate the requirements of 30 CFR 915.16(b) in its rule at IAC 27–40.41(207) instead of updating its statute at Iowa Code section 207.4(1)(d). IAC 27–40.41(207) adopts 30 CFR part 795, as in effect on July 1, 2002, by reference. More specifically Iowa proposed to add subrules IAC 27–40.41(3) and 40.41(4). These subrules read as follows:

Subrule IAC 27–40.41(3)

Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

Subrule IAC 27–40.41(4)

Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

As shown above, new subrules IAC 27–40.41(3) and 40.41(4) do not allow Iowa to implement its small operator assistance program until Iowa Code section 207.4(1)(d) is revised to authorize the new eligibility requirements for small operator assistance. Currently, Iowa is not implementing a small operator assistance program and does not have any potential operators that may qualify for program assistance. Therefore, we are approving subrules IAC 27–40.41(3) and 40.41(4) as acceptable responses to 30 CFR 915.16(b), and we are removing the required amendment.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA–450.1). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IA–450.1). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 2, 2005, we requested comments on Iowa's amendment (Administrative Record No. IA–450.1), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Iowa sent us on August 19, 2005.

We approve the rules proposed by Iowa with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10),

decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 915 is amended as set forth below:

PART 915—IOWA

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 915.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
August 19, 2005	January 31, 2006	IAC 27C40.41(3) and 40.41(4).

■ 3. Amend § 915.16 as follows:
■ a. Revise the section heading to read as set forth below; and
■ b. Remove and reserve the text, in its entirety, of the section.

§ 915.16 Required program amendments. [Reserved]

[FR Doc. 06–881 Filed 1–30–05; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–102]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Cape Fear River, and Northeast Cape Fear River, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations of three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AICW mile 283.1 at Wrightsville Beach; the Cape Fear River Memorial Bridge, mile 26.8, at Wilmington; and the Isabel S. Holmes (US 117) Bridge, at mile 1.0, across Northeast Cape Fear River at Wilmington, North Carolina. This rule will allow the bridges to remain in the closed position at particular dates and times to accommodate road races, marathons and triathlons. Vessels that can pass under the bridges without a bridge opening may do so at all times.

DATES: This rule is effective March 17, 2006.

ADDRESSES: The Fifth Coast Guard District maintains the docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in docket, are part of docket CGD05–05–102 and are available for inspection or copying at the Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23703–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 3, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracostal Waterway (AICW), Cape Fear River, and Northeast Cape Fear River, NC'' in the **Federal Register** (70 FR 57524). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On behalf of the Young Men's Christian Association (YMCA), NCDOT requested changes to the operating drawbridge regulations to accommodate the Tri-Span Run, Battleship Half Marathon, and Triathlon Run. The races are annual events sponsored by the YMCA, attracting spectators and participants from the surrounding cities and states.

In accordance with 33 CFR 117.37(a) for reasons of public safety or for public functions, the District Commander may authorize the opening and closing of a drawbridge for a specified period of time.

NCDOT, who owns and operates the S.R. 74 Bridge across the AICW mile 283.1 at Wrightsville Beach; the Cape Fear River Memorial Bridge mile 26.8 across the Cape Fear River, at Wilmington, North Carolina; and the Isabel S. Holmes Bridge mile 1.0 (U.S. 117, across Northeast Cape Fear River at Wilmington, North Carolina), requested the following drawbridge changes:

Atlantic Intracoastal Waterway

The S.R. 74 Bridge, at AICW mile 283.1 at Wrightsville Beach, has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water in the closed position to vessels. The existing operating regulations are set out in 33 CFR 117.821(a)(5).

A Triathlon race is held on the third Saturday in September of every year with the fourth Saturday used as the alternate day. To facilitate the race, the bridge will be maintained in the closed-to-navigation position from 7 a.m. to 11 a.m. on the third or fourth Saturday in September of every year.

Cape Fear River

The Cape Fear Memorial Bridge mile 26.8, in Wilmington, has a vertical clearance of 65 feet at mean high water and 68 feet at mean low water in the closed position to vessels. The existing regulation is listed at 33 CFR 117.5, which requires the bridge to open on signal.

Both races, the Tri-Span run and the Battlefield Half Marathon, cross the Cape Fear River Memorial Bridge in Wilmington. The Tri-Span run is held on the second Saturday of July. To facilitate the race, the bridge will be maintained in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year.

The Battleship Half Marathon is held on the second Sunday of November. To facilitate the marathon, the bridge will be maintained in the closed-to-navigation position from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

Northeast Cape Fear River

The Isabel S. Holmes Bridge, U.S. 17, SR 133 at mile 1.0, in Wilmington has a vertical clearance of 26 feet at mean high water and 30 feet at mean low water in the closed position to vessels. The existing regulation is listed at 33 CFR 117.829.

Both races, the Tri-Span run and the Battlefield Half Marathon, cross the Isabel S. Holmes Memorial Bridge in Wilmington. The Tri-Span run is held on the second Saturday of July. To facilitate the race, the bridge will be maintained in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year.

The Battleship Half Marathon is held on the second Sunday of November of every year. To facilitate the marathon, the bridge will be maintained in the closed-to-navigation position from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

The Coast Guard believes that the proposed changes are reasonable due to the short duration that the drawbridges will be maintained in the closed position to vessels, because these events have been observed in past years with little or no impact to marine or vehicular traffic. It is also a necessary measure to facilitate public safety that

allows for the orderly movement of participants and vehicular traffic before, during and after the races.

Atlantic Intracoastal Waterway

This rule amends 33 CFR 117.821 by revising paragraph (a)(5), which details the operating regulations for the S.R. 74 Bridge.

Paragraph § 117.821(a)(5) will be amended to allow the S.R. 74 Bridge to remain in the closed position from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year.

Neuse River

Section 117.823 Neuse River will be redesignated at § 117.824 to allow alphabetical placement and codification of Cape Fear River at § 117.823.

Cape Fear River

Cape Fear River will be added at new § 117.823, detailing the operating regulations and allowing the Cape Fear Memorial Bridge to remain in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year. The current operating regulations set out in 33 CFR 117.5 require the drawbridge to open on signal when a request to open is given.

Northeast Cape Fear River

This rule amends 33 CFR 117.829 by revising paragraph (a), which details the operating regulations for the Isabel S. Holmes Bridge.

A new paragraph will be added to § 117.829, which allows the Isabel S. Holmes Bridge to remain in the closed position from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning, and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.821 is amended by revising paragraph (a)(5) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) * * *

(5) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year, the draw need not open for vessels due to the Triathlon run.

* * * * *

§ 117.823 [Redesignated]

■ 3. Redesignate § 117.823 as § 117.824.

■ 4. Add new § 117.823 to read as follows:

§ 117.823 Cape Fear River.

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessel from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

■ 5. Section 117.829 is amended by adding a new paragraph (a)(4) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(4) From 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year, the draw need not open for vessels.

* * * * *

Dated: January 20, 2006.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 06–854 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska-6–001]

RIN 1625–AA00

Safety Zone; Alaska, South Central, Cook Inlet, Kamishak Bay

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near Augustine Island, located in Kamishak Bay in Cook Inlet, Alaska. The zone is needed to protect marine traffic from hazards associated with recent eruptions of the Augustine Volcano. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District; the Coast Guard Captain of the Port, Western Alaska; or their on-scene representative. The intended effect of the proposed safety zone is to mitigate damage to vessels from hazards associated with the Augustine Volcano.

DATES: This rule is effective from January 18, 2006 through September 1, 2006 or until cancelled.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Western Alaska-6–001] and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to prevent a risk to vessel traffic posed by the Augustine Volcano, which began erupting intermittently and with little advance warning on January 11, 2006.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

Register. The Safety Zone is being implemented in response to recent eruptions from the Augustine Volcano. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest, since immediate action is needed to mitigate damage to vessels resulting from eruptions of the Augustine Volcano. The Coast Guard will terminate the zone when the Captain of the Port has determined that the Augustine Volcano no longer poses an immediate threat to marine traffic.

Background and Purpose

On January 10, 2006 the Alaska Volcano Observatory noted a marked increase in seismic activity beneath the Augustine Volcano. On January 11, two discrete explosions were recorded at the volcano's summit. An ash cloud was released, and small volcanic mudflows formed and extended to 500 feet above sea level. Several small explosive events occurred on January 13, producing ash clouds, pyroclastic flows, and volcanic mudflows. The National Weather Service issued a marine advisory indicating that the volcano generated moving avalanches of hot debris, which could reach the shoreline of Augustine Island and continue moving off-shore. Floating rafts of pumice may have been or may be generated, which could pose an additional risk to marine traffic. Additional eruptions occurred on January 14 and January 18.

Discussion of Rule

Based on historical information from past eruptions of the Augustine Volcano and technical information provided by the Alaska Volcano Observatory and National Weather Service, the Captain of the Port, Western Alaska, identified the area where volcanic eruptions were likely to result in conditions that would be immediately hazardous to vessel traffic. The safety zone was established in the area where moving avalanches of hot debris, pyroclastic flows, and volcanic mudflows could pose unpredictable, immediate, and inescapable hazards to navigation. This area is defined by the navigable waters located within one nautical mile of the Augustine Island shoreline. There are additional hazards to marine traffic, including volcanic ash, that are likely to occur outside the established safety zone following a volcanic eruption.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the navigable waters located within one nautical mile of the Augustine Island shoreline.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone does not impact any navigable channels. Vessels transiting through Cook Inlet can transit around the safety zone. We will terminate the safety zone when volcanic activity no longer poses an immediate threat to vessel traffic.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From January 18, 2006 to September 1, 2006, add temporary § 165.T17–023 to read as follows:

§ 165.T17–023 Safety Zone; Alaska, South Central, Cook Inlet, Kamishak Bay.

(a) Description. This safety zone consists of the area located within 1 nautical mile of St. Augustine Island.

(b) Enforcement periods. The safety zone in this section will be enforced from January 18, 2006 through September 1, 2006.

(c) Regulations. (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone without first obtaining permission from the Captain of the Port or his on-scene representative.

Dated: January 18, 2006.

M.R. DeVries,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. E6–1214 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–15–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: This rule is effective as of January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295–1624; *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The revised figures for 2006 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on January 24, 2006 (71 FR 3848).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant Programs—Law, Legal Services.

■ For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A of part 1611 is revised to read as follows:

Appendix A of Part 1611

LEGAL SERVICES CORPORATION 2006 POVERTY GUIDELINES*

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$12,250	$15,313	$14,088

LEGAL SERVICES CORPORATION 2006 POVERTY GUIDELINES*—Continued

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
2	16,500	20,625	18,975
3	20,750	25,938	23,863
4	25,000	31,250	28,750
5	29,250	36,563	33,638
6	33,500	41,875	38,525
7	37,750	47,188	43,413
8	42,000	52,500	48,300
For each additional member of the household in excess of 8, add	4,250	5,313	4,888

*The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$19,600	$24,500	$22,540
2	26,400	33,000	30,360
3	33,200	41,500	38,180
4	40,000	50,000	46,000
5	46,800	58,500	53,820
6	53,600	67,000	61,640
7	60,400	75,500	69,460
8	67,200	84,000	77,280
For each additional member of the household in excess of 8, add	6,800	8,500	7,820

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–880 Filed 1–30–06; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 012406A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Increase

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason trip limit increase.

SUMMARY: NMFS increases the trip limit in the commercial hook-and-line fishery for king mackerel in the Florida east coast subzone to 75 fish per day in or from the exclusive economic zone (EEZ). This trip limit increase is necessary to maximize the socioeconomic benefits of the quota.

DATES: This rule is effective 12:01 a.m., local time, February 1, 2006, through March 31, 2006, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

In accordance with 50 CFR 622.44(a)(2)(i), beginning on February 1, if less than 75 percent of the Florida east coast subzone quota has been harvested by that date, king mackerel in or from that subzone may be possessed on board or landed from a permitted vessel in amounts not exceeding 75 fish per day. The 75–fish daily trip limit will continue until a closure of the subzone's fishery has been effected or the fishing year ends on March 31, 2006.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the Florida east coast subzone will not be reached before February 1, 2006. Accordingly, a 75–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida east coast subzone effective 12:01 a.m., local time, February 1, 2006. The 75–fish trip limit will remain in effect until the fishery closes or until the end of the current fishing season (March

31, 2006) for this subzone. From November 1 through March 31, the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit increase. Allowing prior notice and opportunity for public comment for this trip limit increase is contrary to the public interest because it requires time, thus delaying fishermen's ability to catch more king mackerel than the present trip limit allows and preventing fishermen from reaping the socioeconomic benefits derived from this increase in daily catch.

As this action allows fishermen to increase their harvest of king mackerel from 50 fish to 75 fish per day in or from the EEZ of the Florida east coast subzone, the AA finds it relieves a restriction and may go into effect on its effective date pursuant to 5 U.S.C. 553(d)(1). This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 2006.

Margo Schulze-Haugen

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–886 Filed 1–26–06; 1:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 012506A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the A season allowance of the 2006 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 26, 2006, through 1200 hrs, A.l.t., January 27, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 22, 2006.

NMFS has determined that, approximately 1,900 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2006 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., January 27, 2006.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 23, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 2006.

Margo Schulze-Haugen

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–887 Filed 1–26–06; 1:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 20
Tuesday, January 31, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 71, 72, and 76

RIN 3150–AH59

Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is proposing to amend its employee protection regulations to clarify the Commission's authority to impose a civil penalty upon a non-licensee contractor or subcontractor of a Commission licensee, or applicant for a Commission license who violates the NRC's regulations by discriminating against employees for engaging in protected activity. The NRC is also proposing to amend its employee protection regulations related to the operation of Gaseous Diffusion Plants to conform with the NRC's other employee protection regulations and to allow the NRC to impose a civil penalty on the United States Enrichment Corporation (USEC or Corporation), as well as a contractor or subcontractor of USEC.

DATES: The comment period expires April 17, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH59 in the subject line of your comments. Comments on rulemakings submitted in writing or electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone (301) 415–3456; e-mail *drs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7, prohibit discrimination by a Commission licensee, applicant for a Commission license, a holder of or applicant for a certificate of compliance (CoC) or the Corporation, or contractor or subcontractor of these entities, against employees for engaging in certain protected activities. These regulations identify certain enforcement actions for violations of the requirements. The enforcement actions are denial, revocation, or suspension of the license or certificate; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor.

On January 16, 1998, the NRC issued an enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., contractors to the nuclear industry, for discriminating against one of its employees. Following this enforcement action, the NRC considered modifications to the NRC's employee protection regulations that would clearly allow the NRC, within the limits of its jurisdiction, to impose civil penalties on non-licensees for discriminating against employees who have engaged in protected activities. At the time that NRC took the enforcement action against Five Star Products, Inc., and Construction Products Research, Inc., the NRC was engaged in litigation with another non-licensee, Thermal Science, Inc., that included an issue concerning the scope of the Commission's civil penalty authority over non-licensees. Consequently, the NRC deferred modifying the NRC's employee protection regulations pending resolution of action in Thermal Science, Inc., v. NRC (Case No. 4:96CV02281–CAS). That case was subsequently settled.

On April 14, 2000, the NRC Executive Director for Operations approved the

establishment of a Discrimination Task Group (DTG) to, among other things, evaluate the NRC's handling of matters covered by its employee protection regulations. During this review, the DTG held 12 public meetings and provided the public with an opportunity to comment on its draft report. Among other recommendations, the DTG recommended in its report, ''Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues,'' dated April 2002, that rulemaking be initiated to allow the NRC to impose civil penalties on contractors working for NRC licensees. The DTG received public comments both in favor of, and opposed to, the recommendation that NRC conduct a rulemaking to allow the imposition of civil penalties against contractors for violating the NRC's employee protection requirements.

The DTG's report was forwarded to the Commission as an attachment to SECY–02–0166, ''Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues,'' dated September 12, 2002. On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY–02–0166, approving the recommendations of the DTG as revised by the Senior Management Review Team, subject to certain comments. The Senior Management Review Team was appointed by the Executive Director of Operations to review the final recommendations of the DTG and provide any additional perspectives that could enhance the potential options. The Commission approved, without comment, the DTG rulemaking recommendation regarding civil penalties against contractors.

Discussion

The proposed amendments would allow the Commission to impose civil penalties on contractors or subcontractors for violations of Commission employee protection requirements. The proposed rule represents a significant change in Commission policy in that, currently, a licensee can receive a civil penalty for the discriminatory activities of its contractor or subcontractor, while the contractor or subcontractor is not subject to civil penalty enforcement action. The proposed amendments would clarify the NRC's authority to impose a civil penalty directly on contractors or subcontractors who violate the NRC's employee protection regulations. This authority derives from section 234 of the Atomic Energy Act, which provides that the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any of the enumerated provisions of the Act, or any term, condition, or limitation of any license or certification issued thereunder, or who commits a violation for which a license may be revoked. Section 11s of the Atomic Energy Act broadly defines the term ''person'' to include any individual, corporation, partnership, firm, association, trust, estate, public or private institution group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and any legal successor, representative, agent, or agency of the foregoing.

In 1991, the Commission amended its regulations to allow it to take enforcement action against unlicensed persons for deliberate misconduct (56 FR 40664; August 15, 1991). In so doing, the Commission emphasized that ''any person'' as defined in the Atomic Energy Act necessarily encompasses non-licensees, in order to effectuate the purposes of the Act as it applies to licensees. In that rulemaking, the Commission also noted that it may be able to exercise its section 234 authority to impose civil penalties on unlicensed persons who deliberately cause a licensee to be in violation of requirements.

In 1998, the NRC issued a Severity Level I Notice of Violation without a civil penalty to Five Star Products, Inc., and Construction Products Research, Inc., in response to their discrimination against a former employee who raised safety concerns. Five Star Products, Inc., and Construction Products Research, Inc., were not licensees, but supplied safety-related basic components and services associated with those basic components to the nuclear industry at the time of the discrimination.[1]

The activities of contractors and subcontractors can clearly affect the safe operation of a licensee's facility so that it is important that contractors and subcontractors abide by the Commission's employee protection regulations to effectuate the purposes of the Act. These amendments would allow the Commission to impose civil penalties on any non-licensee employer that discriminates against an employee for engaging in protected activity, if that employer is a contractor or subcontractor of a licensee, or the Corporation at the time that the employee engaged in the protected activity that resulted in discrimination. These amendments will serve the dual objectives of deterring contractors and subcontractors from violating NRC's employee protection regulations and allowing employees to raise regulatory and safety concerns without fear of retaliation. Both of these objectives are critical to the nuclear industry's ability to carry out licensed activities safely.

However, the Commission emphasizes that the proposed amendments do not affect its ability to impose civil penalties against licensees or applicants for discrimination, nor do they diminish the focus on licensee responsibility in the investigative and enforcement process. The Commission has long held licensees to be responsible for maintaining control and oversight of contractor and subcontractor activities. The proposed modifications to the employee protection regulations do not indicate a change in Commission policy in this regard, nor do they diminish the ability of the NRC to impose civil penalties against licensees. There may be instances in which the Commission may wish to issue civil penalties to the responsible contractor or subcontractor, or both, and the licensee. The Commission is maintaining its policy of emphasizing licensee responsibilities for the actions of their contractors and subcontractors. The Commission believes that these amendments are necessary and will offer additional enhancements to the regulatory process by allowing the Commission to exercise its authority to impose a significant enforcement action (*i.e.*, civil penalty) directly on contractors or subcontractors who violate the NRC's employee protection regulations.

The NRC is not proposing to amend 71.9 and 72.10 to provide imposing a civil penalty against a holder or applicant for a CoC, or contractor or subcontractor of a holder or applicant for a CoC. However, if a CoC is also a contractor or subcontractor of a licensee, then a civil penalty could be imposed on a contractor or subcontractor in that capacity.

In addition, in drafting this proposed rule, the NRC identified that 10 CFR 76.7 does not specify the availability of civil penalties as an enforcement action. The Supplementary Information that accompanied the promulgation of 10 CFR 76.7 does not indicate that this omission was intentional.[2] Therefore,

[1] In an earlier case, CLI–93–23, 38 NRC 169, 178–84 (1993)), the Commission held that Five Star Products is a ''subcontractor'' within the meaning of Section 211 of the ERA and 10 CFR 50.7.

[2] The Supplementary Information states that part 76 is based upon comparable requirements; in

the NRC is proposing to amend 10 CFR 76.7 to bring it into conformance with the provisions of the other NRC's employee protection regulations by providing that the Commission may impose a civil penalty on the Corporation or a contractor or subcontractor of the Corporation.

The NRC has also revised the authority citations to correctly reflect current statutory authority.

Proposed Changes to the NRC's Regulations

Sections 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, and 70.7, would be amended to provide that, in addition to imposing a civil penalty against a Commission licensee or applicant for a Commission license, the Commission may impose a civil penalty against a contractor or subcontractor of either of these entities for discriminating against an employee for engaging in protected activity.

Section 71.9 would be amended to provide that, in addition to imposing a civil penalty against a Commission licensee, or applicant, the Commission may impose a civil penalty against a contractor or subcontractor of these entities for discriminating against an employee for engaging in protected activity.

Section 72.10 would be amended to provide that, in addition to imposing a civil penalty against a Commission licensee or applicant, the Commission may impose a civil penalty against a contractor or subcontractor of the licensee, or applicant.

Section 76.7 would be amended to provide that the Commission may impose a civil penalty on the Corporation or contractor or subcontractor of the Corporation.

Agreement States' Comments on Proposed Rulemaking Plan

On June 18, 2004, the NRC provided the proposed Rulemaking Plan to the Agreement States for a 45 day comment period, which closed on August 2, 2004. One comment was received. The comment stated:

> The addition of civil penalties, for contractors and subcontractors who discriminate against employees as referenced, appears appropriate. The final wording of this amendment should clearly express that the licensee is still responsible for maintaining control and oversight of contractor and subcontractor activities, and the licensee has a responsibility to investigate and, if necessary, institute enforcement actions against contractors and subcontractors when claims are brought by their employees. The wording must be expanded to ensure that licensees follow through on their responsibility to maintain control and oversight of contractor and subcontractor activities.

The NRC position is that it is beyond the scope of the proposed amendments to include wording in the amendments to address the licensee's responsibility for oversight of contractors and subcontractors. However, as previously stated in this document, the proposed amendments do not diminish the focus on licensee responsibility for the conduct of its contractors and subcontractors in the area of employee protection.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Agency-wide Document Access and Management System (ADAMS). The NRC's PARS Library is located at *http://www.nrc.gov/readingrm/adams.html.*

Document	PDR	Web	ADAMS
Proposed Rule—Draft Regulatory Analysis	X	X	ML051950431
Proposed Rule—Draft Environmental Analysis	X	X	ML051950438
SECY–02–0166	X	X	ML022120479
SRM in SECY–02–0166	X	X	ML030850783
SECY–04–0195, Rulemaking Plan	X	X	ML042740294

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The proposed rule would enable the Commission to impose civil penalties upon non-licensee contractors and subcontractors who discriminate against employees for engaging in certain protected activities. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC or category Health and Safety (H&S). Category A includes program elements that are basic radiation protection standards or related definitions, signs, labels or terms necessary for a common understanding of radiation protection principles and should be essentially identical to those of the NRC. Category B includes program elements that have significant direct transboundary implications and should be essentially identical to those of the NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and do not need to be adopted by Agreement States. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations and cannot be adopted by Agreement States. Category

particular, 10 CFR part 70, as modified for the certification process. There is no indication that the omission of civil penalties was intended as such a modification (59 FR 48944; September 23, 1994).

H&S are program elements that are not required for compatibility, but have a particular health and safety role in the regulation of agreement material and the State and should contain the essential objectives of the NRC program elements.

The revisions to 10 CFR 50.7, 60.9, 63.9, 72.10, and 76.7 are not relevant to Agreement State programs because these NRC regulations address areas of exclusive NRC authority and are designated a Compatibility Category NRC. The revisions to 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 are categorized as Compatibility Category D, and therefore do not need to be adopted by Agreement States. However, the NRC is seeking comment on the Category D designation of these regulations. In this regard, the NRC specifically invites comment regarding the following: (1) The effect potential inconsistencies in individual state employee protection regulations would have on a national regulatory approach that seeks to foster an environment in which safety issues can be openly identified without fear of retribution, and (2) evidence of any situations in which employees in Agreement States have been adversely affected by a lack of consistency in employee protection regulations.

Comments on this topic should be submitted to the NRC as indicated under the **ADDRESSES** heading.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, Public Law 97–190 (42 U.S.C. 4321 *et seq.*), as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; and, therefore, an environmental impact statement is not required. The basis for this determination is that this rulemaking would not significantly increase the probability or consequences of accidents, no changes would be made in the types of effluents that may be released offsite, there would be no significant increase in public radiation exposure, nor would there be a direct nor reasonably foreseeable indirect effect on the water, land, or air.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading. The environmental assessment is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from the Office of Enforcement, U.S. Nuclear Regulatory Commission, at 301–415–3456 or by e-mail at *drs@nrc.gov*.

Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0017, 3150–0020, 3150–0011, 3150–0127, 3150–0135, 3150–0199, 3150–0009, 3150–0008 and 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from the Office of Enforcement, U.S. Nuclear Regulatory Commission, at 301–415–3456 or by e-mail at *drs@nrc.gov.* The Commission requests public comment on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities based on the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810). The proposed provisions would only impact contractors or subcontractors who violate the NRC's regulations by discriminating against employees who engage in protected activities.

Backfit Analysis

The Commission has determined that the backfit rule does not apply to this proposed rule because these amendments would not involve any provision that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, 50, 60, 61, 63, 70, 71, 72, and 76.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 30.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.7, paragraph (c)(2) is revised to read as follows:

§ 30.7 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 is amended to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

4. In § 40.7, paragraph (c)(2) is revised to read as follows:

§ 40.7 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 is amended to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 50.7, paragraph (c)(2) is revised to read as follows:

§ 50.7 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for part 60 is amended to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 60.9 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

8. In § 60.9, paragraph (c)(2) is revised to read as follows:

§ 60.9 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

9. The authority citation for part 61 is amended to as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948,

953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 61.9 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

10. In § 61.9, paragraph (c)(2) is revised to read as follows:

§ 61.9 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

11. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

12. In § 63.9, paragraph (c)(2) is revised to read as follows:

§ 63.9 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for part 70 is amended to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

14. In § 70.7, paragraph (c)(2) is revised to read as follows:

§ 70.7 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

15. The authority citation for part 71 is amended to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 71.9 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

16. In § 71.9, paragraph (c)(2) is revised to read as follows:

§ 71.9 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

17. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended; 202, 206, 88 Stat. 1242, as amended; 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–485, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

18. In § 72.10, paragraph (c)(2) is revised to read as follows:

§ 72.10 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

* * * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

19. The authority citation for part 76 is amended to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 76.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 76.22 is also issued under sec.193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Section 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

20. Section 76.7 is amended by revising paragraph (c)(2) and adding a new paragraph (c)(3) to read as follows:

§ 76.7 Employee protection.

* * * * *

(c) * * *

(2) Imposition of a civil penalty on the Corporation or a contractor or subcontractor of the Corporation.

(3) Other enforcement action.

* * * * *

Dated at Rockville, Maryland, this 25th day of January, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–1211 Filed 1–30–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23734; Directorate Identifier 2005–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This proposed AD would require installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; doing a functional test and adjustment of the new installation; and doing related investigative/corrective actions if necessary. For certain airplanes, this proposed AD would require doing an additional adjustment test of the re-located control wheel position sensor, and an operational test of the flight data recorder and the digital flight data acquisition unit. This proposed AD also would require installing vortex generators (vortilons) on the leading edge of the outboard main flap on certain airplanes. This proposed AD results from several reports that flightcrews experienced unintended roll oscillations during final approach, just before landing. We are proposing this AD to prevent unintended roll oscillations near touchdown, which could result in loss of directional control of the airplane, and consequent airplane damage and/or injury to flightcrew and passengers.

DATES: We must receive comments on this proposed AD by March 17, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: John Neff, Aerospace Engineer, Flight Test Branch, ANM–160S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6521; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–23734; Directorate Identifier 2005–NM–174–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received eleven confirmed reports that flightcrews on Boeing Model 757 airplanes experienced unintended roll oscillations during final approach, just before landing. One event resulted in a nose gear collapse after a hard landing; another event resulted in a tail strike during a landing that was aborted because of the oscillations. Of the eleven events that have been confirmed, three occurred with Flight Test personnel aboard, during flight-testing activities.

These roll oscillations occur when the pilot makes large, rapid movements of the control wheel, and the airplane does not respond as expected. Boeing has developed a damper for the control wheel that reduces the likelihood of these roll oscillations by providing resistive force to large, rapid control wheel movements that exceed a set value.

We have also received flight test data indicating that one potential cause of these unintended roll oscillations occurs when airflow over the outboard trailing edge flap separates due to the movement of the spoilers resulting from large control wheel inputs. Abrupt control wheel inputs to counteract the resulting roll can lead to roll oscillations of increasing magnitude. Boeing has developed vortex generators (vortilons) that create vortices over the flap surface and help to mitigate a sudden and premature airflow separation when the flaps are set in landing configuration and the spoilers forward of the flaps are deployed.

Unintended roll oscillations near touchdown, if not corrected, could result in loss of directional control of the airplane, and consequent airplane

damage and/or injury to flightcrew and passengers.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757–27A0146, dated October 14, 2004 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Alert Service Bulletin 757–27A0147, dated October 14, 2004 (for Model 757–300 series airplanes). These service bulletins describe procedures for installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41. This installation involves adding a new damper, bracket, crank arm, and control rod. The new damper bracket is installed at four existing holes on the drum bracket assembly. The service bulletins also describe procedures for doing a functional test and adjustment of the new installation, including doing any necessary related investigative and corrective actions and repeating the test and adjustment until all discrepancies are corrected. These service bulletins also describe procedures for sending a report when the applicable service bulletin is complete for each airplane.

We have also reviewed Boeing Alert Service Bulletin 757–57A0058, Revision 1, dated January 10, 2002 (for Model 757–200, –200PF and –200CB series airplanes). This service bulletin describes procedures for installing vortex generators (vortilons) on the leading edge of the outboard main flap. The service bulletin specifies that the vortex generators should be installed on both the left and right flaps at the same time. Installation of vortex generators on only one flap of an airplane may adversely affect the airplane's flight characteristics.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.''

Differences Between the Proposed AD and the Service Bulletins

Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147 specify a compliance time of 36 months for installing a control wheel damper assembly. Boeing Alert Service Bulletin 757–57A0058, Revision 1, recommends installing the vortex generators at the next ''heavy maintenance check.'' This proposed AD would require doing all the actions within 24 months after the effective date of the proposed AD. In developing an appropriate compliance time for this proposed AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the probability of future occurrences, and the average utilization of the affected fleet. In light of all these factors we find that a 24-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Although the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147 describe procedures for submitting a sheet recording accomplishment of the service bulletin, this proposed AD would not require that action.

Although Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147 specify that operators may contact the manufacturer if a just-installed (new) wheel damper does not function properly, this proposed AD would require operators to correct that condition according to a method approved by the FAA.

These differences have been coordinated with Boeing.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently investigating an additional modification that may further reduce or eliminate the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 1,036 airplanes of the affected design in the worldwide fleet and about 629 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. Not all of the required actions must be done on all U.S.-registered airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Install control wheel damper assembly, and do functional test (Model 757–200, –200PF, and –200CB series airplanes).	9 to 11	$65	$7,650 to $10,550	$8,235 to $11,265	578	$4,759,830 to $6,511,170.
Install control wheel damper assembly, and do functional test (Model 757–300 series airplanes).	15	65	$10,550	$11,525	51	$587,775.
Install vortex generators (Model 757–200, –200PF, and –200CB series airplanes).	10	65	$3,336	$3,986	527	$2,100,622.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–23734; Directorate Identifier 2005–NM–174–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in the applicable service bulletin or bulletins in Table 1 of this AD.

TABLE 1.—BOEING SERVICE BULLETINS

Boeing Alert Service Bulletin	Revision	Date	Model
757–27A0146	Original	October 14, 2004	757–200, –200PF, and –200CB.
757–27A0147	Original	October 14, 2004	757–300 series airplanes.
757–57A0058	1	January 10, 2002	757–200, –200PF, and –200CB.

Unsafe Condition

(d) This AD results from several reports that flightcrews experienced unintended roll oscillations during final approach, just before landing. We are issuing this AD to prevent unintended roll oscillations near touchdown, which could result in loss of directional control of the airplane, and consequent airplane damage and/or injury to flightcrew and passengers.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installations

(f) Within 24 months after the effective date of this AD, do the actions in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For all airplanes: Install a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; and do all applicable functional and operational tests and adjustments of the new installation, and all applicable related investigative/corrective actions before further flight after the installation. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0146, dated October 14, 2004 (for Model 757–200, –200PF, and –200CB series airplanes); and Boeing Alert Service Bulletin 757–27A0147, dated October 14, 2004 (for Model 757–300 series airplanes).

(2) For Model 757–200, –200PF, and –200CB series airplanes: Install vortex generators (vortilons) on the leading edge of the outboard main flap in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0058, Revision 1, dated January 10, 2002.

Parts Installation

(g) As of the effective date of this AD, no person may install a damper bracket assembly part number (P/N) 251N1432–2, a bracket-sensor P/N 251N1430–2, or a crank arm P/N 251N1431–2, on any airplane.

Actions Accomplished in Accordance With Previous Revision of Service Bulletin

(h) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–57–0058, dated March 9, 2000, are acceptable for compliance with the actions in paragraph (f)(2) of this AD.

No Reporting Required

(i) Although the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147 describe procedures for submitting a sheet recording accomplishment of the service bulletin, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on January 11, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–1188 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22686; Airspace Docket No. 05–AAL–42]

Proposed Revision of Class E Airspace; Valdez, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace at Valdez, AK. Two new Standard Instrument Approach Procedures (SIAPs) and one revised SIAP are being published for the Valdez Airport. Adoption of this proposal would result in modification of Class E airspace upward from 1,200 feet (ft.) above the surface at Valdez, AK.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22686/ Airspace Docket No. 05–AAL–42, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22686/Airspace Docket No. 05–AAL–42.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would modify Class E airspace at Valdez, AK. The intended effect of this proposal is to modify the Class E airspace upward from 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Valdez Airport, in Valdez, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has drafted two new SIAPs and revised one SIAP for the Valdez Airport. The approaches are; (1) Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME)—A, Amendment 3, (2) VOR/DME—B, Original, (3) VOR/ DME—C, Original. Revised Class E controlled airspace extending upward from 1,200 ft. above the surface within the Valdez Airport area would be established by this action. The 700 ft. airspace will be unchanged. The proposed airspace is sufficient to contain aircraft executing the revised instrument procedures at the Valdez Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Valdez Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Valdez, AK

Valdez, Airport, AK
(Lat. 61°08′02″ N, long. 146°14′54″ W)
Valdez Localizer
(Lat. 61°08′05″ N, long. 146°13′35″ W)
Johnstone Point VORTAC
(Lat. 60°28′51″ N, long. 146°35′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Valdez Airport and within 3.1 miles each side of the Valdez Localizer front course extending from the 6.6-mile radius to 21.6 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 50 miles of the Johnstone Point VORTAC extending clockwise from the Johnstone Point VORTAC 200° radial to the 076° radial.

* * * * *

Issued in Anchorage, AK, on January 24, 2006.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. E6–1160 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22687; Airspace Docket No. 05–AAL–23]

Proposed Revision of Class E Airspace; Saint Paul Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at St. Paul Island, AK. A new Standard Instrument Approach Procedure (SIAP) is being published for the St. Paul Island Airport along with five SIAP revisions. Adoption of this proposal would result in modification of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at St. Paul Island, AK.

DATES: Comments must be received on or before March 17, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22687/Airspace Docket No. 05–AAL–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22687/Airspace Docket No. 05–AAL–23.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being

placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would modify existing Class E airspace at St. Paul Island, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at St. Paul Island, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed one new SIAP and revised five SIAPs for the St. Paul Island Airport. The new approach is the Area Navigation (Global Positioning System (RNAV (GPS)) Runway (RWY) 36, original. The five revised SIAPs are; (1) RNAV (GPS) RWY 18, Amendment (Amdt) 1, (2) Non-directional Beacon (NDB)–A, Amdt 1, (3) NDB/Distance Measuring Equipment (DME) RWY 18, Amdt 3, (4) Localizer (LOC)/DME Back Course RWY 18, Amdt 3, (5) Instrument Landing System (ILS) or LOC/DME RWY 36, Amdt 2. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the St. Paul Island Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing these instrument procedures at the St. Paul Island Airport. A corresponding airspace change to Offshore Airspace Area 1234L will be coordinated with the FAA's Airspace and Rules, Office of System Operations Airspace, in accordance with FAA Order 7400.2.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing new and revised instrument procedures at the St. Paul Island Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 St. Paul Island, AK [Revised]

St. Paul Island, AK

(Lat. 57°10′02″N., long. 170°13′14″W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of the St. Paul Island Airport, and within 8 miles west and 6 miles east of the 360° bearing from the St. Paul Airport from the 8-mile radius to 14 miles north of the St. Paul Airport, and within 6 miles west and 8 miles east of the 172° bearing from the St. Paul Airport from the 8-mile radius to 15 miles south of the St. Paul Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Paul Island Airport.

* * * * *

Issued in Anchorage, AK, on January 24, 2006.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. E6–1158 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

[BOP–1128]

RIN 1120-AB26

Searching and Detaining or Arresting Non-Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations on searching and detaining or arresting non-inmates. This revision reorganizes current rules and makes changes that would subject non-inmates to pat searches, either as random searches or based upon reasonable suspicion, as a condition of entry to a Bureau facility.

DATES: Comments due by April 3, 2006.

ADDRESSES: Our e-mail address is *boprules@bop.gov.* Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view this rule at *http://www.regulations.gov.* You may also comment via the Internet to BOP at *boprules@bop.gov* or via the comment form at *http://www.regulations.gov.*

When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau proposes to amend its regulations on searching and detaining or arresting non-inmates. Current regulations on this subject in 28 CFR part 511 were published on November 1, 1984 (49 FR 44057), February 8, 1994 (59 FR 5924), and March 10, 1998 (63 FR 11818). A further proposed rule relating to both searches of inmates and non-inmates was published on February 25, 1999, (64 FR 9431). The Bureau is working to finalize the portion of that rule relating to inmates, but the portion relating to non-inmates was withdrawn and is encompassed in this proposed rulemaking.

This revision reorganizes current rules and makes other changes for clarity, including excising guidance to staff. Such guidance to staff will remain part of the relevant Bureau policy, enabling the Bureau to more quickly respond to staff correctional needs without altering Federal regulations that pertain to inmates or the public. We also make changes that would subject non-inmates to pat searches, either as random searches or based upon reasonable suspicion, as a condition of entry to a Bureau facility.

Section-by-Section Analysis. Below is an analysis of each new rule. We refer to each proposed rule by its new (proposed) designation.

Section 511.10 Purpose & Scope

This subpart will cover searching persons and their belongings to prevent prohibited objects from entering Bureau facilities; authorizing, denying, and/or terminating a person's presence inside a Bureau facility; and authorizing Bureau staff to remove, and possibly arrest and detain, persons suspected of engaging in prohibited activity. These rules will apply to all persons who wish to enter, or are present in, Bureau facilities, other than inmates in Bureau custody, at all Bureau facilities, including administrative offices.

Additionally, the purpose of these rules is to help us ensure the safety, security, and orderly operation of Bureau facilities, and protect the public. These goals are furthered by carefully managing persons, the objects they bring, and their activities, inside Bureau facilities.

Section 511.11 Prohibited Activities

In this rule, we define ''prohibited activities'' as those which could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public, whether or not such activities are criminal in nature; and we give examples of such activities.

The current rule, § 511.10, contains detailed lists of offenses, including any ''described in title 18 or 21 of the United States Code,'' that are prohibited, but does not characterize them as ''prohibited activities.'' In this revised rule, we characterize such offenses as ''prohibited activities,'' and expand this definition to include non-criminal activities which threaten the safety, security, and orderly operation of Bureau facilities. We use the term ''prohibited activities'' to encompass both criminal and non-criminal violations which nonetheless compromise the Bureau's ability to fulfill its mission.

Section 511.12 Prohibited Objects

In this rule, we define ''prohibited objects'' as those which could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public, whether or not such objects are criminal in nature; and we give examples of such objects.

The current rule, § 511.11(c), defines ''prohibited objects.'' In our revision, we clarify that the term is defined as in 18 U.S.C. 1791(d)(1) and conform it with our mission to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public.

As in the current rule, we give examples of ''prohibited objects,'' including, but not limited to, the following items and their related paraphernalia: Weapons, explosives, drugs, intoxicants, currency, cameras of any type, recording equipment, telephones, radios, pagers, and any other objects which violate criminal laws or are prohibited by Federal regulations or Bureau policies.

Section 511.13 Searches Before Entering, or While Inside, a Bureau Facility

In this rule, we indicate that Bureau staff may search non-inmates and their belongings before entering, or while inside, any of our facilities, to keep out prohibited objects. This rule simply restates our initial statement in the current rule § 511.10(a).

Section 511.14 Notification of Possible Searches

In this rule, we indicate that we display conspicuous notices at the entrance to our facilities, informing all persons that they, and their belongings, are subject to search before entering, or while inside, Bureau facilities. Furthermore, we intend these rules and Bureau national and local policies to provide additional notice that non-inmates and their belongings may be searched before entering our facilities. We also indicate that by entering a Bureau facility, non-inmates consent to being searched in accordance with these rules and Bureau policy.

This rule clarifies language in current § 511.12(a) regarding notices posted outside a facility advising non-inmates that they and their belongings may be subject to search.

Section 511.15 When Searches Will Be Conducted

In this rule, we state that non-inmates and their belongings may be searched either randomly or based on reasonable suspicion before entering, or while inside, a Bureau facility, as follows:

Random Searches. The proposed rule indicates that non-inmates wishing to enter Bureau facilities will be subject to searches occurring randomly, and not based on any particular suspicion that a person is attempting to bring a prohibited object into a Bureau facility. Random searches must always be done impartially, and in a nondiscriminatory fashion.

The possibility of being pat-searched (and the obvious notices so stating) acts as a deterrent to non-inmates seeking to introduce contraband without unnecessarily or extremely burdening staff resources. Random searches would allow for local staff and institutions to maintain their flexibility, particularly with regard to institution resources, staffing changes, numbers of visitors, and time management.

Non-inmate visitors are a significant source of contraband introduction into Bureau facilities. 18 U.S.C. 1791 prohibits providing an inmate a prohibited object in violation of a statute or rule issued under statute. Although other search methods, such as visual searches of the person and electronic detection devices, enable us to search non-inmates before they enter Bureau facilities, a 2003 report by the Office of Inspector General found that non-inmates often found unique ways of introducing contraband that may have easily been detected or prevented by random pat searches of non-inmates entering Bureau facilities.

We therefore must tighten security measures by instituting a system of random pat searching of non-inmates entering Bureau facilities. This will serve the dual purpose of preventing the introduction of contraband by its detection, and deterring visitors who may attempt to introduce contraband. The Bureau's overriding need to prevent introduction of contraband and/or confiscate contraband necessitates random pat searches.

Random searches, (without reasonable suspicion) are permissible, especially if the non-inmate is given prior notice of the search, which therefore lowers the non-inmate's reasonable expectation of privacy when seeking entry to the prison facility, and consents to the search. *See Spear* v. *Sowders,* 71 F.3d 626 (6th Cir. 1995); *U.S.* v. *Johnson,* 27 F.3d 564 (unpublished) (4th Cir. 1994); *El* v. *Williams,* 1990 WL 65717 (unpublished) (E.D.Pa. 1990).

As previously discussed, non-inmates will be aware that they may be subject to such searches both through notices displayed prominently at entry points to Bureau facilities and through these rules. Furthermore, non-inmates will be given the option of either consenting to such searches as a condition of entry or refusing such searches and leaving Bureau property.

However, if a non-inmate refuses to submit to a random search and expresses an intent to leave Bureau property, he or she may still be required to be searched if ''reasonable suspicion'' exists as described in the following paragraph. It is necessary to provide the possibility of a ''reasonable suspicion'' search of non-inmates who decline a random search to discover and prevent the attempt to commit the crime of smuggling contraband or prohibited items into a Bureau facility. The mere fact that a non-inmate refuses to be searched does not give rise to reasonable suspicion, absent some other ground.

Reasonable Suspicion Searches. Notwithstanding random searches, staff may conduct pat searches of a non-inmate based on reasonable suspicion to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public. ''Reasonable suspicion'' exists if a staff member knows of facts and circumstances which warrant rational inferences by a person with correctional experience that a person may be engaged in, attempting, or about to engage in, criminal or other prohibited activity.

This rule merely restates the definition of ''reasonable suspicion'' currently found in § 511.11(a).

Section 511.16 How Searches Will Be Conducted

This proposed rule restates and further details the types of searches listed in current § 511.12. In the current rule, we state that electronic searches, pat searches, visual searches of the person, and drug testing are done with reasonable suspicion. The only substantive change we now propose is to allow electronic searches and pat searches of all non-inmates entering Bureau facilities.

Non-inmate visitors are the primary source of contraband introduction into Bureau facilities. Although we have other search methods, such as visual searches, which enable us to search non-inmates before they enter Bureau facilities, contraband is still introduced. We therefore must tighten security measures by instituting a system of random pat searches of non-inmates.

As we state in proposed rule § 511.15, random searches will not be based on any particular suspicion that a person is attempting to bring a prohibited object into a Bureau facility. Selecting persons for random searches of their persons and belongings will be done according to impartially and in a non-discriminatory fashion.

Section 511.17 When a Non-Inmate Will Be Denied Entry to, or Required to Leave, a Bureau Facility

In this rule, we clarify that the Warden or designee, in his/her discretion, may deny entry to, or require a non-inmate to leave a Bureau facility if the non-inmate refuses to be searched under these rules or if reasonable suspicion otherwise exists indicating that a non-inmate may be engaged in, attempting, or about to engage in, prohibited activity which jeopardizes the Bureau's ability to ensure the safety, security, and orderly operation of its facilities, or protect the public.

This rule merely restates and consolidates current §§ 511.13(b) and (c) and 511.14.

Section 511.18 When Bureau Staff Can Arrest and Detain a Non-Inmate

This rule clarifies the Bureau's authority to arrest and detain non-inmates if there is probable cause indicating a violation or attempted violation of applicable criminal law while at a Bureau facility, under 18 U.S.C. 3050. This language is currently found in § 511.10(b). The proposed rule also consolidates and streamlines language found in current §§ 511.15 and 511.16.

The proposed rule also explains that ''probable cause'' exists when specific facts and circumstances lead a reasonably cautious person (not necessarily a law enforcement officer) to believe a violation of criminal law has occurred, and warrants consideration for prosecution. This merely restates the current definition of ''probable cause'' stated in § 511.11(b).

Finally, the proposed rule indicates that persons arrested by Bureau staff under this rule will be physically secured, using minimally necessary force and restraints, in a private area of the facility away from others. Appropriate law enforcement will be immediately summoned to investigate the incident, secure evidence, take custody or remove from Bureau property, and consider criminal prosecution. This provision merely restates language found in current § 511.15.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 511

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to revise 28 CFR part 511 as follows.

Subchapter A—General Management and Administration

PART 511—GENERAL MANAGEMENT POLICY

1. Revise the authority citation for 28 CFR part 511 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Subpart B is revised as follows:

Subpart B—Searching and Detaining or Arresting Non-Inmates

Sec.

§ 511.10 Purpose and Scope.

(a) These rules facilitate our legal obligations to ensure the safety, security, and orderly operation of Bureau of Prisons (Bureau) facilities, and protect the public. These goals are furthered by carefully managing persons, the objects they bring, and their activities, while inside Bureau facilities.

(b) *Purpose.* These rules cover:

(1) Searching persons and their belongings to prevent prohibited objects from entering Bureau facilities;

(2) Authorizing, denying, and/or terminating a person's presence inside a Bureau facility; and

(3) Authorizing Bureau staff to remove from Bureau facilities, and possibly arrest and detain, persons suspected of engaging in prohibited activity.

(c) *Scope/Application.* These rules apply to all persons who wish to enter, or are present inside, Bureau facilities, other than inmates in Bureau custody. This subpart applies at all Bureau facilities, including administrative offices.

§ 511.11 Prohibited activities.

(a) ''Prohibited activities'' include any activities which could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public, whether or not such activities are criminal in nature.

(b) Examples of ''prohibited activities'' include, but are not limited to: introducing, or attempting to introduce, prohibited objects into Bureau facilities; assisting an escape; and any other conduct which violates criminal laws or is prohibited by Federal regulations or Bureau policies.

§ 511.12 Prohibited objects.

(a) ''Prohibited objects,'' as defined in 18 U.S.C. 1791(d)(1), include any objects which could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public.

(b) Examples of ''prohibited objects'' include, but are not limited to, the following items and their related paraphernalia: weapons; explosives; drugs; intoxicants; currency; cameras of any type; recording equipment; telephones; radios; pagers; and any other objects which violate criminal laws or are prohibited by Federal regulations or Bureau policies.

§ 511.13 Searches before entering, or while inside, a Bureau facility.

Bureau staff may search you and your belongings before entering, or while inside, any of our facilities, to keep out prohibited objects.

§ 511.14 Notification of possible search.

We display conspicuous notices at the entrance to all Bureau facilities, informing all persons that they, and their belongings, are subject to search before entering, or while inside, Bureau facilities. Furthermore, these rules and Bureau national and local policies provide additional notice that you and your belongings may be searched before entering, or while inside, our facilities. By entering or attempting to enter a Bureau facility, non-inmates consent to being searched in accordance with these rules and Bureau policy.

§ 511.15 When searches will be conducted.

You and your belongings may be searched, either randomly or based on reasonable suspicion, before entering, or while inside, a Bureau facility, as follows:

(a) *Random Searches.* This type of search may occur at any time, and is not based on any particular suspicion that a person is attempting to bring a prohibited object into a Bureau facility.

(1) Random searches must be impartial and not discriminate among non-inmates on the basis of age, race, religion, national origin, or sex.

(2) Non-inmates will be given the option of either consenting to random searches as a condition of entry, or refusing such searches and leaving Bureau property. However, if a non-inmate refuses to submit to a random search and expresses an intent to leave Bureau property, he or she may still be required to be searched if ''reasonable suspicion'' exists as described in paragraph (b) of this section.

(b) *Reasonable Suspicion Searches.* Notwithstanding staff authority to conduct random searches, staff may also conduct *reasonable suspicion* searches to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public. ''Reasonable suspicion'' exists if a staff member knows of facts and circumstances which warrant rational inferences by a person with correctional experience that a person may be engaged in, attempting, or about to engage in, criminal or other prohibited activity.

§ 511.16 How searches will be conducted.

You may be searched by any of the following methods before entering, or while inside, a Bureau facility:

(a) *Electronically.*

(1) You and your belongings may be electronically searched for the presence of contraband, either randomly or upon reasonable suspicion.

(2) Examples of electronic searches include, but are not limited to metal detectors, and ion spectrometry devices.

(b) *Pat Search.*

(1) You and your belongings may be pat searched either randomly or upon reasonable suspicion.

(2) A pat search of your person or belongings involves a staff member pressing his/her hands on your outer clothing, or the outer surface of your belongings, to determine whether prohibited objects are present.

(3) Pat searches of your person will always be performed by staff members of the same sex.

(c) *Visual Search.* You and your belongings may be visually searched as follows:

(1) *Person.*

(A) A visual search of your person involves removing all articles of clothing, including religious headwear, to allow a visual (non-tactile) inspection of your body surfaces and cavities.

(B) Visual searches of your person must always be authorized by the Warden or his/her designee and based on reasonable suspicion; random visual searches are prohibited.

(C) When authorized, visual searches will always be performed discreetly, in a private area away from others, and by staff members of the same sex as the non-inmate being searched.

(D) Body cavity (tactile) searches of persons entering Bureau facilities, other than inmates, are prohibited.

(2) *Belongings.* A visual search of your belongings involves opening and exposing all contents for visual and manual inspection, and may be done either as part of a random search or with reasonable suspicion.

(d) *Drug Testing.*

(1) You may be tested for use of intoxicating substances by any currently reliable testing method, including, but not limited to, breathalyzers and urinalysis.

(2) Drug testing must always be authorized by the Warden or his/her designee and must be based on reasonable suspicion that you are under the influence of an intoxicating substance upon entering, or while inside, a Bureau facility. (Bureau staff are subject to drug-testing as mandated in separate Bureau policy.)

(3) Searches of this type will always be performed discreetly, in a private area away from others, and by staff members adequately trained to perform the test.

§ 511.17 When a non-inmate will be denied entry to or required to leave a Bureau facility.

At the Warden's, or his/her designee's, discretion, and based on these rules, you may be denied entry to, or required to leave, a Bureau facility if:

(a) You refuse to be searched under these rules; or

(b) There is reasonable suspicion that you may be engaged in, attempting, or about to engage in, prohibited activity which jeopardizes the Bureau's ability to ensure the safety, security, and orderly operation of its facilities, or protect the public. ''Reasonable suspicion,'' for this purpose, may be based on the results of a search conducted under these rules, or any other reliable information.

§ 511.18 When Bureau staff can arrest and detain a non-inmate.

(a) You may be arrested and detained by Bureau staff anytime there is probable cause indicating that you have violated or attempted to violate applicable criminal laws while at a Bureau facility, as authorized by 18 U.S.C. 3050.

(b) ''Probable cause'' exists when specific facts and circumstances lead a reasonably cautious person (not necessarily a law enforcement officer) to believe a violation of criminal law has occurred, and warrants consideration for prosecution.

(c) Persons arrested by Bureau staff under this rule will be physically secured, using minimally necessary force and restraints, in a private area of the facility away from others. Appropriate law enforcement will be immediately summoned to investigate the incident, secure evidence, and commence criminal prosecution.

[FR Doc. E6–1159 Filed 1–30–06; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–136]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: On August 16, 2005, the Coast Guard proposed to change the regulations governing the operation of 10 drawbridges, and establish operating regulations for 2 drawbridges, all of which cross the Atlantic Intracoastal Waterway in Broward County, FL. The proposed rule would require all of these drawbridges to open twice an hour. The proposed schedule is based on a request from Broward County officials, a test the Coast Guard conducted from December, 2004, until February, 2005, and comments received from the public based on the test. The proposed schedule meets the reasonable needs of navigation while accommodating increased vehicular traffic throughout the county. Due to the active hurricane season and lack of public comments to the previous Notice of Proposed Rulemaking we are reissuing the previous Notice of Proposed Rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before March 15, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050. Commander (dpb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket, (CGD07–04–136) and will be available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6747.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–04–136), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We are maintaining the comments that were previously submitted as a result of the prior temporary deviation and it is unnecessary to resubmit the same comments. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

At the request of Broward County, the Coast Guard published a temporary deviation, effective from December 1, 2004 to February 28, 2005, as a test regulation for 11 Broward County drawbridges(69 FR 67055). The following bridges were covered by the temporary deviation: NE 14th Street, mile 1055.0, Atlantic Boulevard (SR 814), mile 1056.0, Commercial Boulevard (SR 870), mile 1059.0, Oakland Park Boulevard, mile 1060.5, East Sunrise Boulevard (SR 838), mile 1062.6, East Las Olas Boulevard, mile 1064.0, SE 17th Street Causeway, mile 1065.9, Dania Beach Boulevard, mile 1069.4, Sheridan Street, mile 1070.5, Hollywood Beach Boulevard (SR 820), mile 1072.2, and Hallandale Beach Boulevard (SR 824), mile 1074.0. The Dania Beach Boulevard and Sheridan Street bridges currently do not have codified operating regulations. The Hillsboro Boulevard Bridge was not covered by the temporary deviation.

The test was conducted for approximately 90 days to collect data to determine the feasibility of changing the regulations on all drawbridges in Broward County crossing the Atlantic Intracoastal Waterway, to meet the increased demands of vehicular traffic and still provide for the reasonable needs of navigation. The test results indicated that the proposed schedule allowed both vehicular and vessel traffic the opportunity to predict, on a scheduled basis, when the bridges might be in the open position. We received 205 comments, 182 were in favor of the test schedules, 13 were in favor of keeping the existing schedules, 8 comments provided other recommended opening schedules, and 2 were general in nature. Those comments are being maintained in the docket and will be incorporated in the final rulemaking.

Public officials in Broward County requested the change in operating regulations to reduce burdens on county roadways and to standardize drawbridge openings throughout the county. The proposed rule would allow all drawbridges crossing the Atlantic Intracoastal Waterway in Broward County to operate on a standardized schedule that would meet the reasonable needs of navigation and address vehicular traffic congestion.

Discussion of Proposed Rule

The Coast Guard proposes to change the operating regulations of 10 drawbridges, and establish operating regulations for the Dania Beach Boulevard and Sheridan Street drawbridges, all of which cross the Atlantic Intracoastal Waterway in Broward County. The existing regulations that govern the operation of the Broward County drawbridges are published in 33 CFR § 117.5 and 33 CFR § 117.261.

The proposed rule would stagger the bridge openings from north to south and allow a vessel traveling south at five knots to significantly reduce wait times to pass through open drawbridges. Drawbridges will either open on the hour and half hour or on the quarter and three-quarter hour. The results are that the following bridges will operate on the schedules below:

Open on the hour and half hour—
- Hillsboro Boulevard (SR 810), mile 1050.0
- Atlantic Boulevard (SR 814), mile 1056.0
- Commercial Boulevard (SR 870), mile 1059.0
- East Sunrise Boulevard (SR 838), mile 1062.6
- SE 17th Street Causeway, mile 1065.9
- Dania Beach Boulevard, mile 1069.4
- Hollywood Beach Boulevard (SR 820), mile 1072.2

Open on the quarter hour and three-quarter hour—
- NE 14th Street, mile 1055.0
- Oakland Park Boulevard, mile 1060.5
- East Las Olas Boulevard, mile 1064.0
- Sheridan Street, mile 1070.5
- Hallandale Beach Boulevard (SR 824), mile 1074.0

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed rule would provide timed openings for vehicular traffic and sequenced openings for vessel traffic and should have little economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of the Broward County bridges.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.261, remove and reserve paragraphs (cc), (dd), (ee), (ff), (gg), (hh), (jj), and (kk) and revise paragraph (bb) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

(bb) Broward County (1) Hillsboro Boulevard bridge (SR 810), mile 1050.0 at Deerfield Beach. The draw shall open on the hour and half-hour.

(2) NE 14th Street bridge, mile 1055.0 at Pompano. The draw shall open on the quarter-hour and three-quarter hour.

(3) Atlantic Boulevard (SR 814) bridge, mile 1056.0 at Pompano. The draw shall open on the hour and half-hour.

(4) Commercial Boulevard (SR 870) bridge, mile 1059.0, at Lauderdale-by-the-Sea. The draw shall open on the hour and half-hour.

(5) Oakland Park Boulevard bridge, mile 1060.5 at Fort Lauderdale. The draw shall open on the quarter-hour and three-quarter hour.

(6) East Sunrise Boulevard (SR 838) bridge, mile 1062.6, at Fort Lauderdale. The draw shall open on the hour and half-hour.

(7) East Las Olas bridge, mile 1064 at Fort Lauderdale. The draw shall open on the quarter-hour and three-quarter hour.

(8) SE 17th Street (Brooks Memorial) bridge, mile 1065.9 at Fort Lauderdale. The draw shall open on the hour and half-hour.

(9) Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach. The draw shall open on the hour and half-hour.

(10) Sheridan Street bridge, mile 1070.5, at Fort Lauderdale. The draw shall open on the quarter-hour and three-quarter hour.

(11) Hollywood Beach Boulevard (SR 820) bridge, mile 1072.2 at Hollywood. The draw shall open on the hour and half-hour.

(12) Hallandale Beach Boulevard (SR 824) bridge, mile 1074.0 at Hallandale. The draw shall open on the quarter-hour and three-quarter hour.

Dated: January 20, 2006.

D.B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–1150 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–012]

RIN 1625–AA09

Announcement of Public Meeting Regarding the Proposed Drawbridge Schedule Change for the Anna Maria and Cortez Drawbridges, Anna Maria, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard will hold a public meeting at the Holmes Beach City Hall, 5801 Marina Drive, Holmes Beach, Florida 34217 to allow interested parties the opportunity to provide comments regarding whether the Anna Maria and Cortez Drawbridge schedules should be changed.

DATES: The meeting will be held on March 29, 2006 from 5 p.m. to 7 p.m.

ADDRESSES: The meeting will be held at Holmes Beach City Hall, 5801 Marina Drive, Holmes Beach, Florida 34217. Written comments may be submitted to Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3050. Commander (dpb) maintains the public docket, and comments and material received from the public will become part of docket [CGD07–05–097] and will be available for inspection or copying at the above address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION: On August 16, 2005, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** that proposed to change the operating regulations governing the Anna Maria (SR 64) and Cortez (SR 684) drawbridges. [70 FR 48091] The Coast Guard has received several comments from the public stating that the proposed regulation change should not be approved until a public meeting is held. In response to those comments, a public meeting will be held so that all interested parties will have an opportunity to comment as to whether the current drawbridge regulations should be changed.

Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made part of the meeting record. Such written statements and exhibits may be delivered at the meeting or mailed to Chief, Bridge Operations Section, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050.

Dated: January 20, 2006.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–1149 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0013; FRL–8026–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by Maryland Department of the Environment (MDE). This revision pertains to amendments to the regulations for the control of incinerators. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before March 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–MD–0013 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov.*

C. *Mail:* EPA–R03–OAR–2005–MD–0013, Makeba Morris, Chief, Air Quality and Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–MD–0013. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: LaKeshia N. Robertson (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 31, 2005, Maryland submitted a revision to its SIP. The revision (#05–06) pertains to amendments to regulations .01 and .05 under COMAR 26.11.08 Control of Incinerators.

I. Background

COMAR 26.11.08 sets forth emission standards and requirements for incinerators that burn ''infectious'' or special medical waste generated by health care and research facilities. These incinerators, which are used by health care and research facilities, must meet particulate matter and toxic air pollutants emission limits and other requirements. Two years ago, following federal guidelines MDE adopted more stringent federal requirements for certain hospital/ medical waste incinerators. Those requirements applied to various sizes of hospital incinerators but did not apply to units burning pathological waste or crematories.

Special medical waste incinerators that were not subject to the more restrictive federal requirements are subject to the MDE's particulate matter and toxic air pollutant requirements. The special medical waste incinerators subject to Maryland's regulations are required to meet a particulate matter standard of 0.1 grains per standard cubic foot dry (SCFD). Other incinerators and hazardous waste incinerators are subject to a more restrictive 0.03 grain loading requirement.

Although the MDE's intent was to treat crematories as special medical waste incinerators and subject them to the 0.1 grain loading requirement, the current regulations are not clear as to which particulate matter requirement applies to crematories. The October 31, 2005 revision clarifies this discrepancy.

II. Summary of SIP Revision

The revision defines the term ''crematory'' and clarifies the particulate matter requirements to indicate that crematories are subject to the 0.1 grain loading requirement. Special medical waste incinerators that are not subject to the more restrictive federal requirements are subject to the 0.1 grain loading requirement and crematories are treated as special medical waste incinerators. The amendments address COMAR 26.11.08, sections .01 and .05. The referenced changes are listed below.

Revision 1. Section .01B(9–1): The term ''crematory'' is defined as a furnace where a human or animal corpse is burned with: (a) The container or bag in which the human or animal corpse is placed or transported; and (b) The animal bedding, if applicable.

Revision 2. Particulate Matter Section .05A(3) Requirements for Areas I, II, V, and VI: Crematories have been incorporated into the rule with stipulations on the particulate matter emissions into the atmosphere. The rule states that a person may not cause or permit the discharge of particulate matter into the outdoor atmosphere that exceed 0.10 grains per standard cubic foot dry 0.10 gr/SCFD (229 mg/dscm).

Section .05B(2)(a) Requirements for Areas III and IV: Crematories have been incorporated into the rule with stipulations on the particulate matter emissions into the atmosphere. The rule clearly states that a person may not cause or permit the discharge of particulate matter into the outdoor atmosphere to exceed 0.10 grains per standard cubic foot dry 0.10gr/SCFD (229mg/dscm).

III. Proposed Action

EPA is approving Maryland's SIP revisions submitted on October 31, 2005 to incorporate crematory provisions into rule COMAR 26.11.08, which amends sections .01 and .05. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule, to amend Maryland's incinerator regulation, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–1205 Filed 1–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0017; FRL–8026–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the emission standards for consumer products sold and used in the Northern Virginia volatile organic compound (VOC) emissions control area. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before March 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–VA–0017 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2005–VA–0017, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–VA–0017. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 25, 2005, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of (1) amendments to 9 VAC 5 Chapter 20, Part I, Administrative, 9 VAC 5–20–21, Documents Incorporated by Reference; and (2) new regulation 9 VAC 5 Chapter 40, Part II, Emission Standards, Article 50—Consumer Products, 9VAC 5–40–7240 through 9 VAC 5–40–7360.

I. Background

The standards and requirements contained in Virginia's consumers products rule are based on the Ozone Transport Commission (OTC) model rule. The OTC consumer products model rule is based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR). The OTR consists of Delaware, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, and Virginia.

II. Summary of SIP Revision

Amendments to 9 VAC 5–20–21 incorporate by reference additional test methods and procedures needed for 9 VAC 5 Chapter 40, Consumer Products: (1) 40 CFR 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products; (2) American Society for Testing and Materials (ASTM) D86–01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, 2001; (3) ASTM D4359–90, Standard Test Method for Determining Whether a Material Is a Liquid or a Solid, 2000; (4) ASTM E260–96, Standard Practice for Packed Column Gas Chromatography, 2001; (5) South Coast Air Quality Management District Rule 1174, Ignition Method Compliance Certification Protocol, February 28, 1991; (6) California Air Resources Board (CARB) Test Method 310 (including Appendices A and B), Determination of VOCs in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products, July 18, 2001; (7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, section 94503.5, Article 2, sections 94509 and 94511, Article 4, sections 94540–94555, 2003; and (8) American Furniture Manufacturer Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines, January 2001.

Virginia's consumer products rule (9 VAC 5 Chapter 40) applies only to sources in the Northern Virginia VOC emissions control area designated in 9 VAC 5–20–206. This rule limits VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars and floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics and soaps. The compliance date for this rule is July 1, 2005.

Rule 9 VAC 5 Chapter 40 applies to any person who sells, supplies, offers for sale, or manufactures consumer products that contain VOC. Exempted from the rule is any consumer product

manufactured in the Northern Virginia VOC emissions control area for shipment and use outside of this area. The rule does not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia VOC emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia VOC emissions control area. The rule sets specific VOC content limits in percent VOCs by weight for consumer products with a compliance date of July 1, 2005. Exemptions from the VOC content limits are listed in the rule. The rule also contains requirements for the following consumer products: (1) Products requiring dilution, (2) ozone depleting compounds, (3) aerosol adhesives, (4) antiperspirants or deodorants, (5) charcoal lighter materials, and (6) floor wax strippers. Alternative control plans (ACP) are also provided by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. Criteria for innovative products exemption and requirements for waiver requests are listed in the rule. In addition, the rule contains administrative requirements for labeling and reporting as well as test methods for demonstrating compliance. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA's review of this material indicates that the standards and requirements contained in the Virginia's consumer products rule, 9 VAC 5 Chapter 40, are consistent with the OTC model rule. EPA is proposing to approve the Virginia SIP revision submitted on October 25, 2005 for the new regulation, 9 VAC 5 Chapter 40, and the amendments to 9 VAC 5–20–21 that incorporates by reference test methods and procedures needed for 9 VAC 5 Chapter 40. The implementation of this rule will result in the reduction of VOC emissions from consumer products in the Northern Virginia VOC emissions control area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule

also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule pertaining to the emission standards for consumer products in the Northern Virginia VOC emissions control area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 23, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–1210 Filed 1–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), Condition on Charter Bus Transportation Service of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) of 2005, FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding prohibition of FTA grant recipients from providing charter bus service. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., charter bus companies, public transportation operators, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

DATES: You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department of Transportation's Docket Management System (DMS) receives them not later than March 2, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You should mention the docket number of FTA–2005–22657 in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: *http://dms.dot.gov/submit/.*

You may call the Docket at 202–366–9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. You may read the comments received by DMS at *http://dms.dot.gov.*

Interested persons may view docketed materials on the internet at any time. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''simple search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the FTA–2005–22657, which is shown on the first page of this document.

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and the comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202–366–1936 (*elizabeth.martineau@fta.dot.gov*). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Applicants for FTA assistance must formally agree that they will not provide charter service using equipment or facilities funded by FTA, unless there are no private charter operators willing and able to provide the charter service or another exception applies. This requirement is in law under 49 U.S.C. 5323(d) and regulations implementing the requirement are found in 49 CFR 604. The purpose is to ensure that

Federally subsidized assets, such as buses owned by public transportation agencies, do not adversely compete with services provided by private purveyors, such as charter transportation services.

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The bill reauthorizes the Department of Transportation's federal transit programs through fiscal year 2009. SAFETEA–LU amends 49 U.S.C. 5323(d) Condition on Charter Bus Transportation Service. Before SAFETEA–LU, the law stated that if a pattern of violations of the charter agreement was found, the Secretary of Transportation could bar the recipient from receiving further federal assistance. As House committee report language explains, this overly broad authority to bar all future assistance was never used, whereas ''a more flexible authority to penalize charter violators will encourage a more realistic and responsive approach to charter enforcement by FTA.'' The new law adds this flexibility by allowing the Secretary to ''bar a recipient from receiving federal transit assistance in an amount the Secretary considers appropriate.''

II. Statutory Mandate

Section 3023 of SAFETEA–LU amends 49 U.S.C. 5323(d) to state that ''the Secretary shall bar a recipient or an operator from receiving federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the [charter bus] agreement.'' Congressional conference report language on Section 3023 requests that FTA to ''initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d) and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

3. How can the enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

III. Negotiated Rulemaking

As requested by conference report language on Section 3023 of SAFETEA–LU, FTA will conduct the negotiated rulemaking. The Negotiated Rulemaking Act of 1990, *Pub. L. 101–648* (*5 U.S.C. 561, et seq.*) (NRA) establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the rulemaking process. FTA will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

A. The Concept of Negotiated Rulemaking

Usually FTA develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues in the proposed rule. All comments from affected parties are directed to the Department's docket (*http://dms.dot.gov*) for the rulemaking. In general, there is limited communication among parties representing different interests. As Congress noted in the NRA, such regulatory development procedures may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *'' (Sec. 2(2) of *Pub. L. 101–648*). Congress also stated ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3) of *Pub. L. 101–648*).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process by which a proposed rule is developed by a committee composed of representatives of those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.[1] An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) (FACA). Representation on the committee may be ''direct,'' that is, each member represents a specific interest, or may be ''indirect,'' that is, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal Government's own set of interests. A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. FTA anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

B. The Federal Transit Administration's Commitment

In initiating this regulatory negotiation process, FTA plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of FTA who need to be involved in the rulemaking, from the

[1] The Negotiated Rulemaking Act defines ''consensus'' as ''unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition.'' 5 U.S.C. 562(2).

time of initiation until such time as a final rule is issued or the process is expressly terminated. FTA will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has adequate resources to complete its work in a timely fashion in each case as reasonably determined by FTA. These may include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a facilitator; and additional research and other technical assistance. FTA hired RESOLVE, a private company specializing in dispute resolution, to prepare a Convening Report & Recommendations. That report is available in the docket for this Notice. Please see the **ADDRESSES** section of this Notice for information on how to access the docket.

To the extent possible, consistent with its legal obligations, FAT currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the notice of proposed rulemaking to be published for public notice and comment.

C. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves the mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it exclusively to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus, as defined by the committee. Thus, no one interest or group of interests shall control the process. Under the NRA as noted above, ''consensus'' usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation; Invitation To Comment on Issues To Be Addressed

The Conference Committee report on SAFETEA–LU requested that FTA and the negotiated rulemaking committee to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of Internet technology?

3. How can the enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

In addition, FTA proposes the following issues for consideration:

1. A potential new exception for emergency services such as evacuation and training for emergencies, including homeland security, natural disasters, and other emergencies.

2. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

3. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

4. Clarify the definitions of regulatory terms.

FTA invites comment on the issues the negotiating committee should address in developing its recommendations or report.

IV. Procedures and Guidelines for This Regulatory Negotiation

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined by FTA to be necessary or appropriate during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate FTA's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA, a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

C. Membership

The NRA provides that the agency establishing the regulatory negotiation advisory committee ''shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership.'' The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. FTA intends to observe that limit.

D. Interests Likely To Be Affected; Representation of Those Interests

The committee will include a representative from FTA and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The FTA representative is the Designated Federal Official (DFO) and will participate in the deliberations and activities of the committee will the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent FTA in the discussions and negotiations of the committee.

FTA has tentatively identified the following interests to participate in negotiated rulemaking:

(1) Federal Government
(2) State government
(3) Municipal and city government associations
(4) Large private charter operators
(5) Small private charter operators
(6) Trade associations
(7) Large public transit operators
(8) Medium public transit operators
(9) Small public transit operators
(10) Rural public transit operators
(11) Consumers with disabilities
(12) Elderly consumers
(13) Non-profit consumers
(14) For profit consumers
(15) Convention bureaus
(16) Representatives of large sporting events

FTA seeks comment on whether there are additional interests that should be represented on the committee. FTA also seeks comment on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

FTA, through its convener and Convening Report and Recommendations, has identified specific individuals and entities that it proposes be included in the Federal advisory committee, as follows: Shelly Brown, Consultant; John D. Corr, Chestnut Ridge Transportation, Inc., Sandra Draggoo, Capital Area Transportation Authority; Daniel Duff, American Public Transportation Association; Gladys Gillis, Northwest Motorcoach Association; Mark Huffer, Kansas City Area Transit Authority; Pat Jordan, Coalition for Community Based Transit; Carol Ketchserside, Southwest Transit Authority; Alfred LaGasse, Taxicab, Limousine & Paratransit Association; Susan Lent, Akin Gump Strauss Hauer & Feld LLP; Norm Little, United Motorcoach Association; Dale Marsico, Community Transportation Association of America; Richard Ruddell, Fort Worth Transportation Authority; Richard P. Schweitzer, Counsel for American Bus Association; Carl Sedoryk, Monterey Salinas Transit; Steve Tobis, September Winds Motor Coach, Inc.; Michael Waters, Gray Line; Becky Weber, BKSH & Associates, and a representative from both FTA and the Small Business Association.

The list of individuals and interests above is not presented as a complete or exclusive list from which committee members will be selected. Nor does inclusion on the list mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. In fact, the above list of individuals does not include all of the interests that we have identified as being affected by this process. Rather, the above lists merely indicates individuals and interests that FTA has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. We strongly encourage individuals and interests to apply for membership as provided below in paragraph III.E. Those listed above are required to submit an application for membership on the committee.

FTA is aware that the number of potential participants may exceed the number of permissible representatives on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group participate directly in the negotiations. What is important is that each affected interest be adequately represented. Given the limits on the number of representatives who may serve on the advisory committee, it is advisable for interested parties to identify and form coalitions to represent their interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member of the committee whom they will choose to represent their ''interest.'' Those selected to represent a coalition of interests represent the interest of that coalition.

It is very important to recognize that interested parties who are not selected for membership on the committee can make valuable contributions to this negotiated rulemaking effort in several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in ''staffing'' various technical matters (*e.g.*, researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

(1) The name of the applicant or nominee and the interest(s) such person would represent;

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(3) A written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balances.

F. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken

in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

G. Notice of Establishment

After evaluating comments received as a result of this Notice, FTA will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by FTA. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the ''ground rules'' the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. FTA will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that FTA's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decisions to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, FTA will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

FTA is seeking to convene the first of the committee's meetings starting in April, 2006. The exact date and location of that meeting will be announced in our notice of establishment of the advisory committee. Meetings are expected to last approximately two days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately one month.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 24th day of January, 2006, at Washington, DC.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 06–868 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AT69

Regulations To Implement the Captive Wildlife Safety Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to implement the Captive Wildlife Safety Act (CWSA). The CWSA amends the Lacey Act by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met.

DATES: Submit comments on this proposed rule or on the proposed information collection in this proposed rule by March 2, 2006.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to: Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement (OLE), 4401 North Fairfax Drive, MS: LE–3000, Arlington, Virginia 22203, or via fax to: (703) 358–2271. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, OLE, 4501 North Fairfax Drive, Suite 3000, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday. You may also submit comments, identified by RIN 1018–AT69, to the Federal eRulemaking portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Send any comments on the information collection contained in this proposed rule to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Kevin Garlick, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, OLE, at (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The CWSA was signed into law on December 19, 2003 (Pub. L. 108–191). The purpose of the CWSA is to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species and to protect the public from dangerous animals.

In the early 1900s, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey, R–Iowa. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, purchase, receive, or acquire fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Native American tribal law, treaty, or

regulation. The Lacey Act applies to all fish and wildlife (including their parts or products), and wild plants (including plant parts) that are indigenous to the United States and are included in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or are listed under a State conservation law.

However, the Lacey Act did not explicitly address the problem of the increasing trade in large cat species. The large cat species, which include the lion, tiger, leopard, snow leopard, clouded leopard, cheetah, jaguar, and cougar, are extremely effective predators, capable in the wild of taking down prey twice their own size. Severe damage to the prey's nervous system caused by damage to the vertebral column, along with massive blood loss and nearly instant suffocation, all contribute to the prey's certain, and nearly immediate death. The large cats are hunters by nature and, regardless of whether they were raised in captivity, it is impossible to predict when they will revert to instinct. Contemporary experts on large cat behavior and physiology note that humans are not part of the large cats' natural diet, largely because the large cats have learned to treat humans as another predator and to be wary of the dangers of human activity; for example, hunting and habitat encroachment. When large cats and humans do share territory or interact, usually because of human activity, any number of reasons, including hunger, can cause large cats to attack and inflict serious injuries. They are wild creatures that are never completely tamed, nor are they totally predictable, even if they have lived their entire lives with humans.

The ownership of large cat species has dramatically increased in popularity. It is estimated that thousands of individual large cats of various species are kept as pets in the United States. This increase is due, in part, to internet sales and auctions. This increase in popularity has raised concerns for public safety as well as for the welfare of the big cats. As the cats are often purchased when young, many owners are unable to cope with the high maintenance needs of the mature cats. Too often, the owners lack the resources and veterinary knowledge these grown cats require. In the hands of untrained exotic-pet fanciers, large cats are not only a potential danger to people, but are often victims themselves. Additionally, the burden of care often lands on already financially strained sanctuaries or humane societies after the cats are abandoned because they are too dangerous to keep or too expensive to care for properly.

Over the past 10 years, there have been thousands of incidents of human injury and death documented, involving many different species of wild animals, many of which were large cats. According to the Captive Wild Animal Protection Coalition, in the past 5 years there have been 123 incidents involving large cats, including 87 injuries or deaths to adults and children and 38 animal escapes. Nineteen States (Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Vermont, and Wyoming) prohibit the private possession of large cats. Sixteen States (Arizona, Delaware, Indiana, Maine, Mississippi, Montana, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, and Virginia) have a partial ban on possession of large cats or require permits for their possession. Fifteen States (Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nevada, North Carolina, Ohio, South Carolina, Washington, West Virginia and Wisconsin) do not address the issue of private ownership of large cats.

In consideration of the above information, Congress has recognized the need to address the issue of ownership of large cat species on a nationwide basis. Therefore, with the passage of the CWSA, Congress amended the Lacey Act to address this issue. The CWSA amends the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars or cougars, or any hybrid combination of any of these species, unless certain listed exceptions apply.

We have reviewed the intent of Congress with regard to the actual species to be included in the definition of prohibited wildlife species under the CWSA, since scientific names were not included in the CWSA. However, scientific names for prohibited wildlife species were included in the report accompanying S. 269, the Senate version of the CWSA. Based upon this report, we conclude that Congress intended to include the lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*), including all subspecies of each of these species. Also based upon the statutory language and this report, hybrids of any combination of these species, for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion), whether naturally or artificially induced, were also intended by Congress to be included in the definition of prohibited wildlife species.

It is important to note that there are not any pre-Act exemptions to the prohibitions contained in the CWSA. This means that even if you legally acquire any of the prohibited wildlife species in interstate or foreign commerce before we finalize the regulations to carry out the CWSA, you will not be allowed to engage in any of the prohibited activities after we finalize the regulations to carry out the CWSA, unless you qualify under the exceptions.

It is also important to note that the transport prohibition contained in the CWSA applies to any transportation of the prohibited wildlife species in interstate or foreign commerce, not only to transportation that involves commercial activity. This means that any person who owns a live specimen of a prohibited wildlife species and who wants to transport the animal in interstate or foreign commerce as a pet, or even as part of a household move, would not be allowed to do so under the prohibitions contained in the CWSA.

In common usage with regard to animals, ''hybrid'' is defined as offspring produced by propagation between different varieties, breeds, species, or other types of unlike animals. The most common example is breeding a horse with a donkey to produce a mule. In the case of the CWSA, only specimens produced from the breeding of any combination of the prohibited wildlife species are considered hybrids. Common examples include the liger or the tiglon.

There are several exceptions to the prohibitions of the CWSA including: persons licensed or registered by the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA); State colleges, universities, or agencies; State-licensed rehabilitators; State-licensed veterinarians; and accredited wildlife sanctuaries.

Wildlife sanctuaries must meet all of the following criteria to qualify as an ''accredited wildlife sanctuary'' under the CWSA:

(1) Approval by the Internal Revenue Service (IRS) as a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of

1986, which is described in sections 501(c)(3) and 170(b)(1)(A)(vi) of that code.

(2) No commercial trade in the prohibited wildlife species including offspring, parts, and products;

(3) No propagation of the prohibited wildlife species; and

(4) No direct contact between the public and the prohibited wildlife species.

We are proposing to require that accredited wildlife sanctuaries maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be kept up to date and include the names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested.

We are proposing that accredited wildlife sanctuaries must make these records, their facilities, and their prohibited wildlife specimens accessible to Service officials for inspection at reasonable hours to be consistent with the conditions of permit issuance and acceptance in the Service's general permit procedures contained in 50 CFR 13.21(e)(2). Since many of the wildlife sanctuaries subject to this proposed recordkeeping requirement may have applied for and been issued permits under the general permit procedures contained in 50 CFR 13, we felt it would be in the public interest to be consistent with those procedures.

If met, the above criteria will enable a wildlife sanctuary to determine if they qualify for the ''accredited wildlife sanctuary'' exemption provided in the CWSA.

Propagating or breeding with the prohibited wildlife species is specifically prohibited for any wildlife sanctuary in order for that sanctuary to qualify for the ''accredited wildlife sanctuary'' exemption provided in the CWSA. ''Propagation'' or ''breeding'' is generally understood to mean the exchange of gametes between sexually reproducing organisms. However, for the purpose of the CWSA, it means the production of offspring or the attempt to produce, or the possibility of the production of offspring of the prohibited wildlife species, by any means. Placing a male and female large cat in the same cage for any period of time may result in breeding and is considered propagation, whether actual production of offspring is intended or not. Since offspring can also be produced by artificial means, such as artificial insemination or cloning, these activities are also considered propagation.

One of the main purposes of the CWSA is to prevent possible injuries resulting from the direct contact of the prohibited wildlife species with any member of the public. For any wildlife sanctuary to qualify for the ''accredited wildlife sanctuary'' exemption provided in the CWSA, the sanctuary must prevent the possibility of these injuries. While we understand that the keepers and caregivers for these species might, as part of their job, have limited contact with the animals, the possibility of any contact between the animals and any other member of the public must be eliminated. Activities that might result in contact between the prohibited wildlife species and any member of the public, such as photography, play sessions, or offsite programs, are prohibited for any accredited wildlife sanctuary that would qualify for the exemption to the prohibitions. ''Direct contact,'' therefore, is defined in this proposed rule as any situation in which any member of the public may potentially touch or otherwise come into physical contact with any live specimen of any of the prohibited wildlife species; direct contact is specifically prohibited for accredited wildlife sanctuaries.

Individuals and entities that are licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to the species regulated are also exempt from the prohibitions of the CWSA. APHIS is currently the only Federal agency that licenses or registers and inspects individuals and entities with respect to the prohibited wildlife species; therefore, only individuals and entities licensed or registered by APHIS under the AWA qualify under this exemption. In addition, for clarity, we have included definitions of ''licensed person'' and ''registered person'' to indicate who would qualify under this exemption.

We propose to establish these definitions for the CWSA in Title 50 of the Code of Federal Regulations, part 14, Importation, Exportation, and Transportation of Wildlife, in newly added Subpart K.

Public Comments Requested

We intend that any final action resulting from this proposed rule will be as accurate and effective as possible. Therefore, we request comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

This proposed rule has a 30-day comment period. In the interest of public safety, and when considering that both the CWSA and this proposed rule are very short, we believe that 30 days is sufficient time for interested parties to submit comments.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

Executive Order 12866 (Regulatory Planning and Review)

This proposed rule has been reviewed by OMB under Executive Order 12866. Under the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action.

a. This proposed rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. The Endangered Species Act (ESA) already regulates the interstate sale or movement and international trade of tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. The CWSA would, therefore, have no substantial additional impact on the interstate sale and international trade in these species. Our records indicate that in the period from 2001 through 2003, 164 tigers were imported and 123 were exported, 53 leopards were imported and 39 were exported, 2 snow leopards were imported and 4 were exported, 9 jaguars were imported and 5 were exported, and 43 cheetahs were imported. These specimens were imported or exported by organizations who qualified for exemptions under the ESA and who would also likely qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species. The African lion and the cougar are not protected under the ESA.

Under the ESA, individuals may apply to obtain a captive-bred wildlife (CBW) registration, which authorizes, among other things, the interstate sale, with another CBW holder, and export of live specimens of species listed under the ESA that are not native to the United States. Species that are eligible for a CBW include tigers, leopards, snow leopards, clouded leopards, jaguars, and cheetahs. There are currently 378 approved CBWs, of which fewer than 10 authorize activities with the prohibited wildlife species in the CWSA. Therefore, the CWSA would not have any substantial economic effect on this segment of the live animal industry by restricting activities currently authorized through a CBW registration.

CITES regulates, but does not prohibit, the international trade of African lions and cougars. The CWSA could, therefore, have some impact on limiting imports or exports of African lions and cougars. Our records indicate that in the period from 2001 through 2003, 22 African lions were imported and 15 were exported, and 14 cougars were imported and 19 were exported. Some of these importations or exportations may have been for commercial purposes; however, most, if not all, of the individuals who would be importing or exporting live African lions and cougars would probably qualify for one of the exemptions contained in the CWSA. Therefore, the CWSA would not have any substantial economic effect by restricting importations or exportations of these species.

The CWSA will prohibit the import, export, transport, sale, receipt, acquisition or purchase in interstate or foreign commerce, of African lions and cougars by individuals or businesses that would not qualify for one of the exemptions contained in the CWSA. These restrictions are not expected to have a substantial economic effect on this segment of the live animal industry. However, we ask the public for data on these individuals or small businesses to enable us to determine the impact of this proposed rule on those individuals or small businesses.

The CWSA will have its greatest potential impact on the import, export, transport, sale, receipt, acquisition, or purchase in interstate or foreign commerce, of hybrids produced from the breeding of any combination of the prohibited wildlife species, by individuals who would not qualify for one of the exemptions contained in the CWSA. Hybrids produced from the breeding of any combination of tigers, leopards, snow leopards, clouded leopards, jaguars, or cheetahs would be exempt from the provisions of the ESA but not from the provisions of the CWSA. Generally speaking, the most common hybrids resulting from the breeding of any combination of the prohibited wildlife species would be the liger or the tiglon. Numerous websites promote the existence of these hybrids, suggesting that there may be some demand for these animals for use as pets or for display purposes. We do not maintain domestic trade data on these hybrids; therefore, it is difficult to estimate the impact the CWSA will have on this segment of the live animal industry. However, we ask the public for data on these small businesses to enable us to determine the impact of this proposed rule on those small businesses.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides exemptions to these prohibitions for certain persons. Becoming eligible for these exemptions should not have any substantial economic effect on this segment of the live animal industry.

The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and meeting compliance requirements in order to become licensed or registered under the AWA with APHIS and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator.

The costs for meeting APHIS compliance requirements under the AWA are difficult to quantify because these costs are extremely variable, depending on the nature of the business of the individual who seeks to become licensed or registered. Application costs will vary, depending on the nature of the business of the individual. Licenses issued by APHIS under the AWA must be renewed every year with a standard application fee of $10.00. Additional application costs are based upon the nature of the business of the individual and the size of that business. Additional application costs for animal exhibitors can range from $30.00 to $300.00 per year, depending on the number of animals on exhibit. Additional application costs for animal dealers can range from $30.00 to $500.00 per year, depending on the anticipated annual income of the business.

In addition to application fees, the costs for meeting APHIS compliance requirements can vary, depending on the current facilities maintained by the individual and to what degree those facilities meet those requirements. Construction costs for new facilities may also need to be increased in order to achieve compliance.

The costs for meeting compliance requirements in order to become a State-licensed wildlife rehabilitator are difficult to quantify because these costs are extremely variable, depending on the State where the applicant resides and the current facilities maintained by the individual and to what degree those facilities meet those requirements.

We ask the public for data to further define the costs to be assumed by

individuals who seek an exemption to the prohibitions of the CWSA.

Each wildlife sanctuary that intends to qualify under the exemption to the prohibitions of the CWSA is prohibited from commercially trading in the prohibited wildlife species or the species' offspring, parts, or byproducts, and from propagating any of the prohibited wildlife species. Though this requirement may result in lost revenue for the sanctuary, it is not expected to result in a substantial negative economic effect for sanctuaries as a whole. In addition, if the owner of a sanctuary chooses to commercially trade in the prohibited wildlife species, he or she should become licensed or registered with APHIS under the AWA, and would thus qualify for the exemption in the CWSA.

The CWSA provides an exemption, for individuals transporting live specimens of the prohibited wildlife species, to individuals who qualify for one of the other exemptions provided in the CWSA. This proposed rule requires that the transporting individuals produce evidence to prove that they are transporting specimens between other exempted individuals. However, these requirements would not increase costs for the transporting individuals because APHIS already requires these individuals to be registered by meeting similar requirements.

In addition to amending the Lacey Act by adding prohibitions that make it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, the prohibited wildlife species, the CWSA provides improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. Activities that might result in direct contact between the prohibited wildlife species and any member of the public, such as photography, play sessions, or offsite programs, have been prohibited for accredited wildlife sanctuaries. Though this requirement may result in lost revenue for sanctuaries, it is not expected to result in a substantial negative economic effect for wildlife sanctuaries as a whole.

b. This proposed rule will not create inconsistencies with other agencies' actions. We are the lead agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. Therefore, this proposed rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

In addition, 19 States prohibit the private possession of large cats, and 16 States have a partial ban on possession of large cats or require permits for their possession. Therefore, the CWSA does not create inconsistencies with these State's restrictions, but rather supports them.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule will not change the fee schedule for any permits issued by us or any licenses or registrations issued by APHIS.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule will not raise novel legal or policy issues because it is based upon Congress's passage of the CWSA, which reflects a heightened concern for public safety resulting from the increased trade in the prohibited wildlife species for use as pets and the increased risk of danger to members of the public when given opportunities for direct contact with the prohibited wildlife species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Department of the Interior has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. In addition, a Small Entity Compliance Guide is not required.

This proposed rule regulates businesses that commercially trade in the prohibited wildlife species in interstate or foreign commerce. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries.

Most of the businesses that commercially trade in the prohibited wildlife species, in interstate or foreign commerce, would be considered small businesses as defined under the Regulatory Flexibility Act. These businesses are most logically placed in three primary industries: Zoos and Botanical Gardens; Nature Parks and Other Similar Institutions; and All Other Animal Production. The SBA size standard for the first two industries is $6 million in average annual receipts, and the SBA size standard for the third industry is $.75 million in average annual receipts. However, it should be noted that the nature of these businesses would require that most, if not all, of them must be licensed or registered under the AWA by APHIS, making them eligible for one of the exemptions provided in the CWSA. However, we recognize that there may be small businesses that do not fit into any of the above categories and are not eligible for one of the exemptions provided in the CWSA. We ask the public for data on these small businesses to enable us to determine the impact of this proposed rule on those small businesses.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This proposed rule does not have an annual effect on the economy of $100 million or more. For the reasons described above, we have determined that this proposed rule will not have an annual effect on the economy of $100 million or more. It is not anticipated that the restrictions imposed by the CWSA and the costs to become eligible for the exemptions contained in the CWSA will amount to an annual effect on the economy of $100 million or more.

b. This proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The CWSA provides exemptions to its prohibitions for certain persons. Becoming eligible for these exemptions will increase costs for the live animal industry; however, as described above, we do not expect these increased costs to be major. The only direct costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA would be the costs associated with the application process and meeting compliance requirements in order to become licensed or registered under the AWA with APHIS and the costs associated with meeting compliance requirements in order to become a State-licensed wildlife rehabilitator. We ask the public for data to further define the costs to be assumed by individuals who seek an exemption to the prohibitions of the CWSA.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The CWSA will not have significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises because

foreign-based enterprises that are subject to U.S. jurisdiction must comply with the same regulatory requirements as U.S.-based enterprises who buy or sell the prohibited wildlife species in interstate or foreign commerce.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will have no effects.

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. We are the lead agency regulating international wildlife trade, the issuance of permits to conduct activities affecting federally protected wildlife and their habitats, and carrying out the United States' obligations under CITES. No small government assistance or impact is expected as a result of this proposed rule.

b. This proposed rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This proposed rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this proposed rule does not have significant takings implications. Under Executive Order 12630, this proposed rule does not affect any constitutionally protected property rights. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. Though interstate sale of large cat specimens is prohibited, the impact of this prohibition should be minimal because intrastate sales are not prohibited. A takings implication assessment is not required. Therefore, this proposed rule does not have significant takings implications.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This proposed rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not overly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act

This proposed rule contains new information collection requirements for which OMB approval is required under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

We are proposing to require that wildlife sanctuaries that seek to qualify as an ''accredited wildlife sanctuary'' under the CWSA must maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be up to date, and include: (1) The names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and (2) the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. This proposed rule does not contain any requirement that wildlife sanctuaries must submit an application to qualify as an ''accredited wildlife sanctuary.''

The requirement to make records available will only be initiated on an as-needed basis. We estimate that there are no more than 750 wildlife sanctuaries that could qualify for the ''accredited wildlife sanctuary'' exemption.

We do not anticipate that this proposed recordkeeping requirement will impose any significant burden because the maintenance of these records is typically a normal business practice. Most wildlife sanctuaries will likely only have custody of a limited number of specimens of the prohibited wildlife species. Therefore, complying with the requirement to make records available can likely be met by making available and copying, if needed, a small number of documents pertaining to the possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species, which we estimate can be completed in an hour or less. The total estimated annual burden for complying with this proposed recordkeeping requirement should be 750 hours or less. We estimate that the average wage of individuals likely to be providing these documents is $20.00 per hour. Therefore, the total estimated annual dollar value of this proposed recordkeeping requirement is $15,000.00.

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. You should send comments that you may have on the information collection contained in this proposed rule to the Desk Officer for the Interior Department at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail). OMB has 60 days to approve or disapprove the information collection contained in this proposed rule but may respond in 30 days. You should submit your comments to OMB by the date specified above in **DATES** to assure their consideration.

We are specifically seeking public comments as to: (a) Whether or not this collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (b) the accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

National Environmental Policy Act

This proposed rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM

2.2 (g) and 6.3 (D). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This proposed rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import, export, buy, sell, transport, receive, or acquire the prohibited wildlife species in interstate or foreign commerce.

Executive Order 13211 (Energy Supply, Distribution, or Use)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this proposed rule is to regulate the movement of large cat species and to provide improved safety for the public by prohibiting direct contact with the prohibited wildlife species at accredited wildlife sanctuaries. This proposed rule is not a significant regulatory action under Executive Order 12866 and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Author

The originator of this proposed rule is Mark Phillips, OLE, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described above, we propose to amend part 14, subchapter B of Chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

2. Revise § 14.3 to read as follows:

§ 14.3 Information collection requirements.

The Office of Management and Budget approved the information collection requirements contained in this part 14 under 44 U.S.C. 3507 and assigned OMB Control Numbers 1018–0092 and 1018–0XXX. The Service may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. We are collecting information about wildlife imports or exports, including products and parts, to facilitate enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) and the Captive Wildlife Safety Act (117 Stat. 2871), and to carry out the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. We estimate the burden for the reporting requirements associated with OMB Control Number 1018–0092 to vary from 10 to 15 minutes per response, and for the recordkeeping requirements associated with OMB Control Number 1018–0XXX to be 1 hour or less. Direct comments regarding the burden estimate or any other aspect of these requirements to the Service Information Collection Control Officer, MS–222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

3. Add a new subpart K to read as follows:

Subpart K—Captive Wildlife Safety Act

Sec.

Subpart K—Captive Wildlife Safety Act

§ 14.250 What is the purpose of these regulations?

The regulations in this subpart carry out the Captive Wildlife Safety Act (CWSA), 117 Stat 2871, which amended the Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378, by adding paragraphs 2(g), 3(a)(2)(C), and 3(e) (16 U.S.C. 3371, 3372).

§ 14.251 What other regulations may apply?

The provisions of this subpart are in addition to, and are not in place of, other regulations of this subchapter B which may require a permit or describe additional restrictions or conditions for the importation, exportation, acquisition, sale, receipt, purchase, or transportation of wildlife in interstate or foreign commerce.

§ 14.252 What definitions do I need to know?

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this subpart:

Accredited wildlife sanctuary means a facility that cares for live specimens of one or more of the prohibited wildlife species and:

(1) Is approved by the United States Internal Revenue Service as a corporation that is exempt from taxation under § 501(a) of the Internal Revenue Code of 1986, which is described in §§ 501(c)(3) and 170(b)(1)(A)(vi) of that code;

(2) Does not commercially trade in prohibited wildlife species, including offspring, parts and products;

(3) Does not propagate any of prohibited wildlife species; and

(4) Does not allow any direct contact between the public and the prohibited wildlife species.

Direct contact means any situation in which any individual other than an authorized keeper or caregiver may potentially touch or otherwise come into physical contact with any live specimen of the prohibited wildlife species.

Licensed person means any individual, facility, agency, or other entity that holds a valid license from and is inspected by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) (See definition of ''licensee'' in 9 CFR 1.1.).

Prohibited wildlife species means a specimen of any of the following eight species: lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera*

pardus), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*) or any hybrids resulting from the breeding of any combination of these species, for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion), whether naturally or artificially produced.

Propagate means to allow or facilitate the production of offspring of any of the prohibited wildlife species, by any means.

Registered person means any individual, facility, agency, or other entity that is registered with and inspected by APHIS under the AWA (See definition of ''registrant'' in 9 CFR 1.1.).

§ 14.253 What are the restrictions contained in these regulations?

Except as provided in § 14.255, you may not import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, any live prohibited wildlife species.

§ 14.254 What are the requirements contained in these regulations?

Accredited wildlife sanctuaries must maintain complete and accurate records of any possession, transportation, sale, acquisition, purchase, barter, disposition, importation, or exportation of the prohibited wildlife species. These records must be up to date, and must include the names and addresses of persons to or from whom any prohibited wildlife species has been purchased, sold, bartered, imported, exported or otherwise transferred; and the dates of these transactions. Accredited wildlife sanctuaries must maintain these records for 5 years, must make these records accessible to Service officials for inspection at reasonable hours, and must copy these records for Service officials, if requested. In addition, by declaring itself to be accredited, a wildlife sanctuary agrees to allow access to its facilities and its prohibited wildlife specimens by Service officials at reasonable hours.

§ 14.255 Are there any exemptions to the restrictions contained in these regulations?

Yes. The prohibitions of § 14.253 do not apply to:

(a) A licensed person or registered person;

(b) A State college, university, or agency;

(c) A State-licensed wildlife rehabilitator;

(d) A State-licensed veterinarian;

(e) An accredited wildlife sanctuary; or

(f) A person who:

(1) Can produce documentation showing that he or she is transporting live prohibited wildlife species between persons who are exempt from the prohibitions in § 14.253; and

(2) Has no financial interest in the prohibited wildlife species other than payment received for transporting them.

Dated: December 19, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–1191 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 20
Tuesday, January 31, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Thursday, March 9, 2006 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on March 9, 2006 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Larry Timchak, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on March 9, 2006, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include reviewing project proposals that have been sent in for 2006 fiscal year and making decisions on those projects whether to invite to second meeting or dismiss project.

Dated: January 24, 2006.

Lawrence A. Timchak,

Caribou-Targhee Forest Supervisor.

[FR Doc. 06–873 Filed 1–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, March 6, 2006. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: March 6, 2006.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: January 13, 2006.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 06–874 Filed 1–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet February 17, 2006, (RAC) in Willits, California. Agenda items to be covered include:

(1) Approval of minutes;
(2) Public Comment;
(3) Sub-Committees;
(4) Matters before the group, discussion only;
a. announcements and recognition;
(5) Discussion/approval of projects; and
(6) Next agenda items and adjournment.

DATES: The meeting will be held on February 17, 2006, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; E-mail *rhurt@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by February 14, 2006. Public comment will have the opportunity to address the committee at the meeting.

Dated: January 24, 2006.

Blaine Baker,

Designated Federal Official.

[FR Doc. 06–879 Filed 1–30–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: National Forests in North Carolina, USDA Forest Service.

ACTION: Notice of New Recreation Fee Site.

SUMMARY: The National Forests in North Carolina will begin charging a $5.00 fee per campsite for overnight use at Curtis Creek Campground, which is presently being expanded and is under construction. This campground will facilitate recreational use within National Forests in North Carolina on the Grandfather Ranger District. Fee revenue will support operations and maintenance of the campground and future site improvements.

DATES: Curtis Creek Campground is scheduled to open for public use in May 2006.

FOR FURTHER INFORMATION CONTACT: David H. Wright, Recreation Fee Coordinator, 828–257–4256, National Forests in North Carolina, PO Box 2750, Asheville, NC 28802.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act, (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. The National Forest in North Carolina presently manages two overnight recreation fee sites on the Grandfather Ranger District. Recreation fees for overnight use range from $3.00 per single campsite to $20.00 per large group site based on the type and condition of amenities offered. Curtis Creek Campground will offer vault toilet facilities, potable water, developed campsites with picnic table, fire ring, lantern posts, tent pad, trash receptacle, vehicle/camping trailer parking space and access to trails and stream fishing.

Dated: January 25, 2006.

Marisue Hilliard,

National Forests in North Carolina Supervisor.

[FR Doc. 06–877 Filed 1–30–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: National Forests in North Carolina, USDA Forest Service.

ACTION: Notice of New Recreation Fee Site.

SUMMARY: The National Forests in North Carolina will begin charging a $5.00 daily special recreation permit trail fee per Off Highway Vehicle (OHV) and $30.00 per OHV for a season pass for use of the Black Swamp OHV trail system. Construction of the site was completed in 2005. This new trail system replaces a system that existed until 2005. The trail system was moved to protect environmental sites and will facilitate continued OHV use within the National Forests in North Carolina on the Croatan Ranger District. Fee revenue will support operations and maintenance of the trail system and trailhead and future site improvements.

DATES: Black Swamp OHV Area is scheduled to open for public use in 2006.

FOR FURTHER INFORMATION CONTACT: David H. Wright, Recreation Fee Coordinator, 828–257–4256, National Forests in North Carolina, PO Box 2750, Asheville, NC 28802.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. The National Forests in North Carolina presently manages four OHV fee sites in North Carolina. Recreation fees are $5.00 per OHV per day and $30.00 per OHV per season pass. Black Swamp OHV Area will offer vault toilet facilities, improved parking area, information kiosk, and access to twelve miles of OHV trails.

Dated: January 25, 2006.

Marisue Hilliard,

National Forests in North Carolina Supervisor.

[FR Doc. 06–876 Filed 1–30–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–848; A–122–847]

Antidumping Duty Investigation and Countervailing Duty Investigation of Hard Red Spring Wheat from Canada: NAFTA Panel Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 7, 2005, a North American Free Trade Agreement United States–Canada Binational Panel reviewing the International Trade Commission's finding that an industry in the United States was materially injured by reason of imports of hard red spring wheat from Canada, remanded the case to the International Trade Commission. On October 5, 2005, the International Trade Commission determined on remand that the domestic industry is neither materially injured by reason of the subject imports nor threatened with such injury. By decision issued on December 12, 2005, the Panel affirmed in full the International Trade Commission's determination on remand. Consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce is notifying the public that the International Trade Commission's remand determination for hard red spring wheat from Canada and the Notice of Final Panel Action issued by the Panel reviewing the International Trade Commission's determination, discussed below, are not ''in harmony'' with the International Trade Commission's original results.

EFFECTIVE DATE: January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey Twyman, Office of AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0182 and (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 2003, the International Trade Commission (''ITC'') determined that an industry in the United States is materially injured by reason of imports of hard red spring wheat from Canada found to be subsidized and sold in the United States at less than fair value. Hard Red Spring Wheat from Canada, Inv. Nos. 701–TA–430B and 731–TA–1019B (Final), USITC Pub. 3639 (October 2003) (''*Final Injury Determination*''); 68 FR 60707 (October 23, 2003). Respondent parties subsequently challenged the ITC's *Final Injury Determination* before the United States–Canada Binational Panel (''Panel''), pursuant to Article 1904 of the North American Free Trade Agreement (''NAFTA''). The parties briefed and argued the case before the Panel, and on June 7, 2005, the Panel issued its decision, remanding in full the ITC's determination. Hard Red Spring Wheat from Canada, USA–CDA-2003–1904–06, Decision of the Panel (June 7, 2005).

On October 5, 2005, the ITC determined on remand that the domestic industry is neither materially injured by reason of the subject imports nor threatened with material injury. By decision issued on December 12, 2005, the Panel affirmed in full the ITC's determination on remand. Hard Red Spring Wheat from Canada, USA–CDA–2003–1904–06, Decision of the Panel on the Remand Determination of the U.S. International Trade Commission (December 12, 2005). On December 12, 2005, the Panel directed the NAFTA Secretariat to issue a Notice of Final Panel Action on the 11th day following the December 12, 2005, panel decision. Decision of the Panel, 70 FR 75792 (December 21, 2005). The Notice of Final Panel Action was issued on December 23, 2005.

Timken Notice

In the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Federal Circuit

held that, pursuant to 19 U.S.C. Sec. 1516a(c)(1) and 1516a(e), the Department of Commerce (''the Department'') must publish notice of decision of the Court of International Trade (''CIT'') which is ''not in harmony'' with the Department's results. *Timken*, 893 F.2d at 340. This is true for CIT decisions which are ''not in harmony'' with the results of ITC injury, or threat of injury, determinations as well. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the Panel's December 23, 2005, Notice of Final Panel Action, and its December 12, 2005, decision are ''not in harmony'' with the ITC's *Final Injury Determination*. Publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*.

In addition, this notice will serve to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 2, 2006, i.e., 10 days from the issuance of the Notice of Final Panel Action, at the current cash deposit rate.

January 25, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1204 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 31, 2006.

SUMMARY: In December 2005, the Department of Commerce (the Department) received four requests to conduct new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC). We have determined that these requests meet the statutory and regulatory requirements for the initiation of new shipper reviews.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Kristina Boughton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Mongolia Altin Bee–Keeping Co., Ltd. (Altin), Dongtai Peak Honey Industry Co. Ltd. (Peak Honey), Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (QMD), and Tianjin Eulia Honey Co., Ltd. (Eulia) in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month, and a June semi–annual anniversary month. Altin, Peak Honey, QMD, and Eulia identified themselves as producers and exporters of honey. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Altin, Peak Honey, QMD, and Eulia certified that they did not export honey to the United States during the period of investigation (POI), and that they have never been affiliated with any exporter or producer which exported honey to the United States during the POI. Furthermore, the four companies have also certified that their export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Altin, Peak Honey, QMD, and Eulia submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.

The Department conducted Customs database queries to confirm that the shipments made by Altin, Peak Honey, QMD, and Eulia had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection (CBP). We note that although Eulia submitted documentation regarding the volume of its shipment, the date of its first sale to an unaffiliated customer in the United States, and the date the merchandise was first entered for consumption in the United States, our Customs query shows that Eulia's shipment entered the United States shortly after the anniversary month.

Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review (POR), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under ''appropriate'' circumstances the Department has the flexibility to extend the POR. *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319–27320 (May 19, 1997). In this instance, Eulia's shipment entered in the month following the end of the POR. The Department does not find that this delay prevents the completion of the review within the time limits set by the Department's regulations.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (the Act), as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Altin, Peak Honey, QMD, and Eulia. *See* ''Memorandum to the File through James C. Doyle: New Shipper Review Initiation Checklist,'' dated January 24, 2006. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results were issued. 19 CFR 351.214(i)(1).

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for a new shipper review, initiated in the month immediately following the anniversary month, will be the 12-month period immediately preceding the anniversary month. Therefore, the POR for the new shipper reviews of Altin, Peak Honey, and QMD is December 1, 2004, through November 30, 2005. As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the new shipper review of Eulia is December 1, 2004, through December 31, 2005.

It is the Department's usual practice in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991, at Comment 1, as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon*

Carbide from the People's Republic of China, 59 FR 22585, 22587 (May 2, 1994).

Accordingly, we will issue questionnaires to Altin, Peak Honey, QMD, and Eulia, including a separate rates section. The review will proceed if the responses provide sufficient indication that Altin, Peak Honey, QMD, and Eulia are not subject to either de jure or de facto government control with respect to their exports of honey. However, if any company does not demonstrate its eligibility for a separate rate, then that company will be deemed not separate from other companies that exported during the POI and the new shipper review will be rescinded for that company.

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importers, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Altin, Peak Honey, QMD, and Eulia. Specifically, since Altin, Peak Honey, QMD, and Eulia have stated that they are both the producers and exporters of the subject merchandise for the sales under review, we will instruct CBP to limit the bonding option only to entries of merchandise that were both exported and produced by Altin, Peak Honey, QMD, and Eulia, respectively.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214(d), and 19 CFR 351.221(c)(1)(i).

Dated: January 25, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–1208 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Explore Feasibility of Establishing a NIST/Industry Consortium on the Constituent Contribution to the Service Life of a Coating System

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting to be held on May 16 and 17, 2006 at the NIST main campus in Gaithersburg, MD. The objective of this two-day meeting is to evaluate industry interest in the fourth phase of the Coatings Service Life Prediction Consortium. The goals of this consortium include the development of measurement methods and mathematical models for ascertaining the service life response of filled coatings containing pigments having a range of photoreactivities exposed in both the laboratory and the field. For this particular phase of research, the filler of interest will be titanium dioxide nanoparticles and pigments dispersed in both a thermoplastic and a thermoset matrix. NIST staff members along with at least one technical representative from each participating member company will conduct consortium research and development. Membership in the Consortium is open to the coatings community, particularly coating manufacturers, raw material suppliers, and equipment manufacturers. The term of the consortium is intended to be four years.

DATES: The meeting will take place on Tuesday, May 16, 2006 from 9 a.m. to 5 p.m. and on Wednesday, May 17, 2006 from 9 a.m. to noon. Interested parties should contact NIST at the address, telephone number or fax number shown below to confirm their interest and to gain entry into the NIST facility.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, MD 20899, Building 224, Room B245.

FOR FURTHER INFORMATION CONTACT: Jonathan W. Martin or Joannie Chin, Polymeric Materials Group, National Institute of Standards and Technology (NIST), 100 Bureau Drive MS 8615, Gaithersburg, MD 20899. Telephone: (301) 975–6707; fax: 301 990–6891; e-mail: *jonathan.martin@nist.gov* or *joannie.chin@nist.gov*.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

Dated: January 26, 2006.

William Jeffrey,

Director.

[FR Doc. E6–1199 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Edwin Irizarry Garcia From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Edwin Irizarry Garcia.

DATES: The decision record for the Irizarry administrative appeal closed on January 23, 2006.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brett Grosko, Attorney-Adviser, NOAA Office of the General Counsel, 301–713–7384.

SUPPLEMENTARY INFORMATION: Edwin Irizarry Garcia (Appellant) has filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. ''1456(c)(3)(A), and implementing regulations found at 15 CFR part 930, Subpart H. Mr. Irizarry appeals an objection raised by the Puerto Rico Planning Board (Puerto Rico) to a consistency certification contained within his application to the

Army Corps of Engineers for a permit to reconstruct a private pier.

Applicable provisions of the CZMA require that a notice be published in the **Federal Register**, indicating the date on which the decision record closed. Accordingly, notice is hereby provided that the decision record for this appeal closed on January 23, 2006.

For additional information about this appeal contact Brett Grosko, 301–713–7384.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: January 24, 2006.

James R. Walpole,

General Counsel.

[FR Doc. 06–885 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011906A]

Endangered Species; Permit Nos. 1209, 1261, and 1351

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit modifications.

SUMMARY: Notice is hereby given that the following scientific research permits have been modified: Cypress Gardens (Dwight Williams, Principal Investigator), 3030 Cypress Gardens Road, Moncks Corner, SC 29461 (Permit No. 1209); U.S. Fish and Wildlife Service, Warm Springs Regional Fisheries Center (Vincent Mudrak, Principal Investigator), 5308 Spring Street, Warm Springs, GA 31830 (Permit No. 1261); Dr. Frank Chapman (Principal Investigator), Department of Fisheries and Aquatic Sciences, University of Florida, 7922 NW 71st Street, Gainesville, FL 32653 (Permit No. 1351).

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824-5309.

FOR FURTHER INFORMATION CONTACT: Shane Guan and Jennifer Skidmore (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

File No. 1209: Cypress Gardens is authorized to maintain no more than eight (8) juvenile shortnose sturgeon in captivity for education purposes within its facility. This modification will extend the permit through January 31, 2007.

File No. 1261: The Warm Springs Regional Fisheries Center of the U.S. Fish and Wildlife Service is authorized to maintain captively bred shortnose sturgeon for scientific research at the Warm Springs, Bears Bluff and Orangeburg Hatcheries. Research Activities include feeding studies, propagation studies and evaluation studies as identified in the recovery plan for shortnose sturgeon. This modification will extend the permit through January 31, 2007.

File No. 1351: Dr. Frank Chapman of the Department of Fisheries and Aquatic Sciences, University of Florida, is authorized to conduct laboratory investigations and experimental culture to identify the physical, chemical, and biological parameters necessary for optimal survival and growth of shortnose sturgeon. The research is believe to complement the knowledge base of sturgeon species and assist the National Fish Hatcheries to optimally maintain and reproduce shortnose sturgeon stocks. This modification will extend the permit through January 31, 2007.

Issuance of thess modification, as required by the ESA was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of any endangered or threatened species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 25, 2006.

Carrie W. Hubard,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–1200 Filed 1–30–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Meeting of the Defense Advisory Committee on Military Compensation

AGENCY: DoD.

ACTION: Notice.

SUMMARY: On December 29, 2005, the Department of Defense published a notice of meeting (70 FR 77150) scheduled for January 24, 2006, 10 a.m. Due to last minute cancellations of committee members, attendance would be insufficient to conduct public deliberations, therefore the meeting is canceled. This announces the cancellation. This meeting will be rescheduled and announced at a later date.

FOR FURTHER INFORMATION CONTACT: LTC Janet Fenton, Designated Federal Official, Defense Advisory Committee on Military Compensation, 2521 S. Clark Street, Arlington, VA 22202. Telephone: 703–699–2718.

Dated: January 25, 2006.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 06–872 Filed 1–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on January 30 and 31, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting will be an Executive Session for Task Force management as well as classified and FOUO briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: January 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–856 Filed 1–30–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, ED.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Friday, February 10, 2006.

TIME: 9 a.m.–3 p.m.

ADDRESSES: The Board will meet at the Hilton Washington, 1919 Connecticut Avenue, NW., Washington, DC 20009. Phone: 202–483–3000, Fax: 202–232–0438.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889, fax: 202–502–7879.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002 and Executive Order 13385 dated September 25, 2005. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda

The purpose of the meeting is to receive and deliberate on legislative and policy issues pertinent to the Board and the nation's HBCUs and to discuss relevant issues to be addressed in the Board's multi-year annual report.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Friday, February 3, 2006. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Friday, February 10, 2006, between 2 p.m.–3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Friday, February 3, 2006.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Dated: January 25, 2006.

Margaret Spellings,

Secretary of Education, U.S. Department of Education.

[FR Doc. 06–901 Filed 1–30–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board—Executive Working Group

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB)—Executive Working Group. The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), requires that public notice of these teleconferences be announced in the **Federal Register**. No official business will be conducted '' this is for information sharing only.

DATES: February 16, 2006 from 2 p.m. to 3 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Director, Central Regional Office, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801 or e-mail *GARY.BURCH@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities pursuant to the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters. No official actions will be taken.

Public Participation: The teleconference is open to the public. Members of the public wishing to participate in the teleconference should

contact Gary Burch for call-in information. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 26, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 06–884 Filed 1–30–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting; Sunshine Act

January 26, 2006.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 2, 2006, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. *Note—Items listed on the agenda may be deleted without further notice.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary. Telephone (202) 502–8400.

For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

901ST MEETING—REGULAR MEETING

[February 2, 2006, 10 a.m.]

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Markets, Tariffs, and Rates—Electric	
E–1	RM05–30–000	Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards.
E–2	RM05–36–000	Revised Regulations Governing Small Power Production and Cogeneration Facilities.
E–3	RM06–8–000	Long-Term Firm Transmission Rights in Organized Electricity Markets.
	AD05–7–000	Long-Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators.

Magalie R. Salas,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 06–907 Filed 1–26–06; 4:41 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0458; FRL–7753–5]

Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program (EPA ICR No. 2088.02; OMB Control No. 2070–0166). This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 2006. The information collected under this ICR relates to recordkeeping and reporting as part of a voluntary program to help hospitals enhance work place safety, reduce waste and waste disposal costs, and become better environmental stewards and neighbors. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number EPA–HQ–OPPT–2005–0458, must be received on or before *April 3, 2006.*

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Chen Wen, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8849; fax number: (202) 564–8901; e-mail address: *wen.chen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an establishment or organization engaged in furnishing medical, surgical, or other health services to individuals. Potentially affected entities may include, but are not limited to:

- Offices of physicians (NAICS 6211), e.g., cardiologists' offices, family physicians' offices, gynecologists' offices, internists' offices, medical doctors' offices, neurologists' offices, obstetricians' offices, orthopedic physicians' offices, pediatricians' (except mental health) offices, surgeons' (except dental) offices, etc.
- Offices of dentists (NAICS 6212), e.g., dental surgeons' offices, dentists' offices, endodontists' offices, orthodontists' offices, periodontists' offices, etc.
- Outpatient care centers (NAICS 6214), e.g., birth control clinics, family planning centers, fertility clinics, pregnancy counseling centers, reproductive health services centers, etc.
- Medical and diagnostic laboratories (NAICS 6215), e.g., blood analysis laboratories, cytology health laboratories, DNA testing laboratories, forensic laboratories (medical), genetic testing laboratories, medical laboratories (except radiological, x-ray), medical pathology laboratories, parasitology health laboratories, pathology laboratories (medical), testing laboratories (medical), toxicology health laboratories, etc.
- Home health care services (NAICS 6216), e.g., home health agencies, home health care agencies, home nursing services (except private practices), hospice care services (in home), visiting nurse associations, etc.
- General medical and surgical hospitals (NAICS 6221), e.g., children's hospitals (general), general medical and surgical hospitals, general pediatric hospitals, osteopathic hospitals, etc.
- Psychiatric and substance abuse hospitals (NAICS 6222), e.g., alcoholism rehabilitation hospitals, children's hospitals, psychiatric or substance abuse, detoxification hospitals, drug addiction rehabilitation hospitals, hospitals, substance abuse, mental (except mental retardation) hospitals, mental health hospitals, psychiatric hospitals (except convalescent), rehabilitation hospitals, alcoholism and drug addiction, etc.
- Nursing care facilities (NAICS 6231), e.g., convalescent homes or convalescent hospitals (except psychiatric), group homes for the disabled with nursing care, homes for the elderly with nursing care, hospices (inpatient care), nursing care facilities, nursing homes, retirement homes with nursing care, skilled nursing facilities, etc.
- Residential mental retardation, mental health, and substance abuse facilities (NAICS 6232), e.g., group homes (mental retardation), intermediate care facilities (mental retardation), mental retardation homes, mental retardation hospitals, etc.
- Community care facilities for the elderly (NAICS 6233), e.g., assisted-living facilities with on-site nursing facilities, continuing care retirement communities, etc.
- Grant-making and giving services (NAICS 8132), e.g., charitable trusts, awarding grants, community foundations, corporate foundations, awarding grants, educational trusts, awarding grants, grant-making foundations, philanthropic trusts, awarding grants, scholarship trusts (i.e., grant-making, charitable trust foundations), trusts, religious, awarding grants, etc.
- Social advocacy organizations (NAICS 8133), e.g., associations for retired persons, advocacy, civil liberties organizations, developmentally disabled advocacy organizations, human rights advocacy organizations, mentally retarded advocacy groups, senior citizens advocacy organizations, veterans' rights organizations, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPPT–2005–0458. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website: EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPPT–2005–0458. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number EPA–HQ–OPPT–2005–0458. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0458. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program.

ICR numbers: EPA ICR No. 2088.02, OMB Control No. 2070–0166.

ICR status: This ICR is currently scheduled to expire on July 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: The H2E program is a voluntary partnership program jointly administered by EPA and the American Hospital Association (AHA) that helps hospitals enhance work place safety, reduce waste and waste disposal costs, and become better environmental stewards and neighbors. The program is based on a 1998 Memorandum of Understanding signed by AHA and EPA to provide health care professionals with the tools and information necessary to reduce mercury waste, reduce the overall volume of waste, and identify pollution prevention opportunities.

The H2E program has two elements, the Partners for Change program and the Champions for Change program. The Partners for Change program recognizes health care facilities that pledge support to the H2E mission and develop goals for reducing waste and mercury in their own facilities. The Champions for Change program recognizes organizations that encourage and aid health care facilities to participate as H2E Partners, provide on-going promotional or technical assistance information, or make changes that support the goals of the H2E program in their own institutions. An organization's decision to participate in the H2E program is completely voluntary.

This information collection addresses reporting and recordkeeping activities that support the administration of the H2E program.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 0.5 and 20 hours per response, depending upon the type of information the respondent provides. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Establishment or organization engaged in furnishing medical, surgical, or other health services to individuals.

Estimated total number of potential respondents: 630.

Frequency of response: Annually.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 5,501.

Estimated total annual burden costs: $188,723.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 4,609 hours (from 10,110 hours to 5,501 hours) in the total estimated respondent burden compared with that identified in the information collection most recently approved by OMB. The changes in the burden estimates are based on actual program experience from conducting the H2E program over the past three years. The number of new partner facilities recruited per year has been revised downward to reflect average recruit numbers. Similarly, the number of award applicants has also been revised downward to reflect the number of award applications received per year.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval

process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 19, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E6–1206 Filed 1–30–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8026–3]

Notice of Two Open Meetings of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold one full board meeting and one Roundtable on Sustainable Watershed Financing. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities and to discuss progress with work products under EFAB's current strategic action agenda.

Environmental financing topics expected to be discussed include: Financial assurance mechanisms, environmental management systems, loan guarantee programs, innovative environmental financing tools, sustainable watershed financing, the application of useful life financing to state revolving loan funds, and affordability of water and wastewater.

The purpose of the Roundtable is to explore innovative sustainable financing tools and techniques for timely implementation of watershed plans. The Board will collect information, ideas, and recommendations from a group of expert panelists who will share their perspectives.

Both meetings are open to the public, however; seating is limited. All members of the public who wish to attend either meeting must register in advance, no later than Monday, February 23, 2006.

DATES: Full Board Meeting is scheduled for March 7, 2006 from 1 p.m.–5 p.m. and March 8, 2006 from 8:45 a.m.–5 p.m. The Sustainable Watershed Finance Roundtable is scheduled for March 9, 2006 from 9 a.m.–5 p.m.

ADDRESSES: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005.

Registration and Information Contact: To register for either meeting or get further information please contact Alecia Crichlow, U.S. EPA, at (202) 564–5188 or *crichlow.alecia@epa.gov.* Accommodations for persons with special needs should be requested at least 10 days prior to the meeting date.

Dated: January 19, 2006.

Joseph Dillon,

Director, Office of Enterprise Technology & Innovation.

[FR Doc. E6–1207 Filed 1–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8026–4]

Proposed CERCLA Administrative Cost Recovery Settlement; The Patclin Chemical Superfund Site, Yonkers, Westchester County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Patclin Chemical Superfund Site located in Yonkers, Westchester County, New York (the ''Site'') with the following settling party: Mark Klein. The settlement requires the settling party to pay $350,000.00 to the Hazardous Substance Superfund in reimbursement of EPA's past response costs with respect to the Site. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before March 2, 2006.

ADDRESSES: The proposed settlement is available for public inspection at USEPA, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Jean Regna, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3164. Comments should reference the Patclin Chemical Superfund Site located in Yonkers, Westchester County, New York, EPA Index No. CERCLA–02–2005–2023, and should be addressed to Jean Regna, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Jean Regna, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3164.

Dated: December 15, 2005.

William McCabe,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. E6–1209 Filed 1–30–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 15, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Michael A. Medley, Dothan, Alabama; to acquire additional voting

shares of SunSouth Bancshares, Inc., and thereby indirectly acquire voting shares of SunSouth Bank, both of Dothan, Alabama.

Board of Governors of the Federal Reserve System, January 26, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–1195 Filed 1–30–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. CBS Banc–Corp, Russellville, Alabama; to acquire 100 percent of the voting shares of Farmers Bank, Cornersville, Tennessee.

Board of Governors of the Federal Reserve System, January 26, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–1194 Filed 1–30–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, February 6, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: David W. Skidmore, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–943 Filed 1–27–06; 3:30 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 72842–72843, dated December 7, 2005) is amended to reflect the establishment of the Division for Heart Disease and Stroke Prevention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention.

Delete in its entirety the title and functional statement for the *Cardiovascular Health Branch (CL33), Division of Adult and Community Health (CL3).*

After the mission statement for the *Program Services Branch (CUCLD), Office of Smoking and Health (CUCL)*, insert the following:

Division for Heart Disease and Stroke Prevention (CUCM). (1) Plans, directs, and coordinates programs to reduce morbidity, risk factors, costs, disability, mortality, and disparities associated with heart disease, stroke, and other cardiovascular disease outcomes; (2) provides national leadership, technical assistance, expert consultation, and training to state and local health agencies in intervention, surveillance, evaluation, and communication or marketing activities related to implementing state programs, registries, and other surveillance systems associated with reducing and preventing cardiovascular disease outcomes; (3) provides national leadership and coordination of the agency-wide cardiovascular collaborative; (4) implements surveillance systems and conducts surveillance of outcomes and utilization of health care and prevention resources related to heart disease, stroke, high blood pressure, high cholesterol, and other cardiovascular diseases to monitor trends and evaluate program impact on morbidity, mortality, risk factor improvement, cost, disability, and disparities; (5) conducts epidemiologic studies and disseminates findings to identify emerging risk factors with potential for prevention and control strategies; (6) conducts prevention research studies and disseminates findings to identify and evaluate the feasibility and effectiveness of potential prevention and control strategies in health care systems and at the community level; (7) identifies, implements, and evaluates programs to prevent and control heart disease, stroke, high blood pressure, high cholesterol, other cardiovascular disease outcomes, and disparities through the translation and communication of best practices in health care and risk factor prevention into widespread health systems policies and community changes; (8) collaborates with other

cardiovascular health related activities at CDC, including the Lipid Standardization Program, within the National Center for Environmental Health/Division of Laboratory Sciences, and the Thrombosis Lab, within the National Center on Birth Defects and Developmental Disabilities/Division of Hematologic Diseases; (9) maintains liaison and collaborative relationships with official, private, voluntary agencies, educational institutions, or other groups involved in the prevention and control of heart disease, stroke, and other cardiovascular diseases or risk factors; (10) provides technical assistance and consultation to other nations and to the World Health Organization in the global prevention and control of cardiovascular disease.

Office of the Director (CUCM1). (1) Establishes and interprets policies and determines program priorities; (2) provides leadership and guidance in program planning and development, program management, program evaluation, budget development, and division operations; (3) monitors progress toward achieving division objectives and assessing the impact of programs; (4) insures that division activities are coordinated with other components of CDC both within and outside the center, with Federal, state and local agencies, and related voluntary and professional organizations; (5) coordinates division responses to requests for technical assistance or information on primary and secondary heart disease and stroke prevention practices, behaviors and policies, including division activities and programs; (6) serves as the co-lead for the Healthy People 2010 heart disease and stroke objectives for the nation; (7) provides national leadership in coordinating and implementing activities to support a public health action plan to prevent heart disease and stroke; (8) develops and produces communications tools and public affairs strategies to meet the needs of division programs and mission; (9) develops health communication campaigns at the national and state levels; (10) guides the production and distribution of print, broadcast, and electronic materials for use in programs at the national and state levels; (11) provides leadership, consultation and technical assistance on health communication issues for heart disease and stroke prevention; (12) reports accomplishments, future directions, and resource requirements; (13) provides program management and administrative support services; (14) represents the division at official professional and scientific meetings.

Epidemiology and Surveillance Branch (CUCMB). (1) Monitors the epidemiology of cardiovascular disease risk factors, behaviors, outcomes, costs, barriers, awareness, access to care, geographic variations and disparities; (2) prepares routine surveillance reports of national and state trends in cardiovascular disease risk factors, behaviors, outcomes, and disparities, which includes the mapping of geographic variations; (3) develops, designs, implements, and evaluates new cardiovascular disease registries and other surveillance systems that address gaps in existing CDC surveillance systems; (4) prepares epidemiologic and scientific papers for publication in medical and public health journals and for presentation to national public health and scientific conferences on surveillance and epidemiologic findings; (5) identifies, investigates, implements, and evaluates new surveillance methodologies and technologies that involve electronic data abstraction and transfer to State and national registries and spatial analysis; (6) proposes and serves as technical advisers and project officers for epidemiologic research projects that fill gaps in surveillance and intervention and investigates emerging risk factors that will lead to the prevention of cardiovascular disease and the elimination of disparities in cardiovascular disease; (7) serves as scientific and technical experts in cardiovascular disease epidemiology and surveillance methodology to state health departments or to advisory groups at the national/international level; (8) provides scientific leadership in the development, extension, and improvement of surveillance systems, epidemiologic strategies, and/or service to cardiovascular health programs; (9) facilitates integration of epidemiology and surveillance across the division.

Applied Research and Evaluation Branch (CUCMC). (1) Develops a comprehensive applied research and translation agenda, including evaluation, research and health economic research; (2) plans, develops, and implements projects related to applied research, evaluation research, and health economics research; (3) prepares scientific papers for publication in public health media journals and for presentation at national and international conferences, meetings and seminars on applied research, evaluation research and health economics research; (4) synthesizes a body of best science and practice that can be applied to various public health settings; (5) prepares and disseminates products that translate applied research, evaluation research, and health economics science to state programs and other; (6) develops a comprehensive division evaluation plan addressing all facets of division activities, including state-based program evaluation, research evaluation, and evaluation training needs; (7) provides applied research, evaluation, and health economics expertise and technical assistance to the division, center, CDC, and national and international partners.

Program Development and Services Branch (CUCMD). (1) Provides programmatic leadership and support for state-based heart disease and stroke prevention programs; (2) provides comprehensive technical advice and assistance in planning, developing and evaluating the state programs; (3) provides program policies and guidance outlining CDC's role and the national goals and objectives of the State Heart Disease and Stroke Prevention Program; (4) reviews and monitors the state cooperative agreements and other appropriate grantees; (5) serves as technical experts in the implementation of policy and environmental strategies for health promotion, primary and secondary prevention of heart disease and stroke for states, within CDC and with partners; (6) provides comprehensive training expertise, including distance learning, training seminars, meetings, state success documents, and other materials to promote the programs and assist state grantees with planning and implementation of a state-based program; (7) implements and monitors management information systems for state heart disease and stroke prevention programs to monitor the national progress toward achieving Health People 2010 and division goals; (8) obtains, analyzes, and disseminates, data from state-based heart disease and stroke prevention programs to develop operational strategies for translation of results into improved program practice; (9) provides leadership in the development of partnerships between state programs and organizations at the national and state level; (10) provides technical assistance to state programs on use of data and other basic areas of epidemiology; (11) develops systematic processes for providing state program guidance through determining and disseminating promising program intervention practices and providing opportunities for states to share information and tools for program improvement; (12) partners with national organizations that can assist states with priority activities; (13)

provides leadership; and technical expertise, in women's cardiovascular health, health disparities and healthcare interventions for cardiovascular primary and secondary prevention programs as it relates to the Well-Integrated Screening and Evaluation for Women Across the National (WISEWOMAN) Program; (14) develops and implements CDC programs and research that impact heart disease and stroke risk factors in financially vulnerable, uninsured and underinsured women aged 40–64; (15) facilitates the integration of program services across the division.

Dated: January 20, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06–857 Filed 1–30–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Office of Refugee Resettlement—Authorization for Release of Information (R–317).

OMB No.: OMB 0970–0278.

Description: The 2002 Homeland Security Act (Pub. L. 107–296) charged the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) with the care and placement of unaccompanied alien children (UAC) in Federal custody. The 2002 Homeland Security Act also charged ORR with the development and implementation of a policy that permits suitable sponsors to request that ORR release these children to the sponsors while the children await immigration proceedings.

Before ORR can decide whether the children may be released, the potential sponsors must meet certain conditions pursuant to Section 462 of the Homeland Security Act and the *Flores* v. *Reno* settlement agreement, No. CV85–4544–RJK (C.D. Cal 1997). When ORR assesses the suitability of sponsors, it considers the sponsors' ability and willingness to provide for the physical, mental and financial well-being of an unaccompanied alien child. Also, ORR considers the sponsors' assurances that they will ensure the children's appearance before the immigration courts. To ensure the safety of the children, sponsors must undergo a background check. In this Notice, ACF announces that it proposes to revise the Office of Refugee Resettlement Authorization for Release of Information (R–317), a currently employed information collection instrument, to improve the efficacy of its background check procedures.

Respondents: Potential sponsors of unaccompanied alien children referred by the Department of Homeland Security to ORR for care and placement by reason of their immigration status.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Authorization for Release of Information	3,000	13	.05	1,950
Estimated Total Annual Burden Hours				1,950

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 23, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–865 Filed 1–30–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22983]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0095, 1625–0099, 1625–0101, and 1625–0102

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded four Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. The ICRs are as follows: (1) 1625–0095, Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions; (2) 1625–0099,

Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; (3) 1625–0101, Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old; and (4) 1625–0102, National Response Resource Inventory. The ICRs describe information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 2, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2005–22983] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St., NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Mr. Arthur Requina), 1900 Half Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–22983]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the March 2, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–22983], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under ADDRESSES, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (70 FR 69980, November 18, 2005) required by 44 U.S.C. 3506(c)(2). That notice elicited one comment.

The comment relates to 1625–0095, Oil and Hazardous Materials Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions. The commenter raises the point that alternative methods of inspection should be explicitly allowed for vapor control system detonation arrestors—where site-specific conditions warrant such an alternative. The Coast Guard will consider this comment in an ongoing rulemaking that will revise vapor control system standards.

Information Collection Request

1. *Title:* Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 1625–0095.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of bulk oil and hazardous materials facilities and vessels.

Forms: None.

Abstract: This information is needed to minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. This information will also be used to evaluate proposed alternatives and requests for exemptions.

Burden Estimate: The estimated burden remains 1,440 hours a year.

2. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 1625–0099.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of passenger vessels.

Forms: None.

Abstract: The collection of information requires passenger vessels to have posted two placards that contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Burden Estimate: The estimated burden has decreased from 2,680 hours to 2,547 hours a year.

3. *Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 1625–0101.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of certain tank vessels.

Forms: None.

Abstract: This information is used to verify the structural integrity of older tank vessels. The Oil Pollution Act of 1990 required the issuance of regulations related to the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old.

Burden Estimate: The estimated burden remains 13,688 hours a year.

4. *Title:* National Response Resource Inventory.

OMB Control Number: 1625–0102.

Type of Request: Extension of a currently approved collection.

Affected Public: Oil spill removal organizations.

Forms: None.

Abstract: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Burden Estimate: The estimated burden has increased from 1,224 hours to 1,236 hours a year.

Dated: January 24, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–1151 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–06]

Notice of Submission of Proposed Information Collection to OMB; Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information provided by government-sponsored enterprises or GSEs will be used to monitor compliance with statutorily mandated housing goals to promote affordable housing and support housing for underserved mortgage markets.

DATES: *Comments Due Date:* March 2, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0514) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

OMB Approval Number: 2502–0514.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Information provided by government-sponsored enterprises or GSEs will be used to monitor compliance with statutorily mandated housing goals to promote affordable housing and support housing for underserved mortgage markets.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
2	76		62.14		9,446

Total Estimated Burden Hours: 9,446.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 26, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–1213 Filed 1–30–06; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–05]

Notice of Submission of Proposed Information Collection to OMB; Continuum of Care Homeless Assistance Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grant application to determine eligibility for the Continuum of Care Homeless Assistance grant program, to establish grant amounts, and to ensure that technical requirements are met.

DATES: *Comments Due Date:* March 2, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0112) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Grant Application.

OMB Approval Number: 2506–0112.

Form Numbers: HUD–40090–1, HUD 40090–2, HUD–40090–3a, HUD–40090–3b, HUD–40090–4, HUD–2991, HUD–2880, HUD–96010, HUD–92041, HUD–27300, SF–424, SF–424–Supp, SF–LLL

Description of the Need for the Information and Its Proposed Use: Grant application to determine eligibility for the Continuum of Care Homeless Assistance grant program, to establish grant amounts, and to ensure that technical requirements are met.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
9,050	1.49		14.98		202,247

Total Estimated Burden Hours: 202,247.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 25, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–1215 Filed 1–30–06; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–01]

Notice of Proposed Information Collection: Comment Request; Personal Financial and Credit Statement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_L._Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Malloy, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for

review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement.

OMB Control Number, if applicable: 2502–0001.

Description of the need for the information and proposed use: Form HUD–92417, Personal Financial and Credit Statement, is used by HUD personnel and FHA approved lenders to determine if the sponsor, mortgagor, or the principals of the mortgagor have the financial capability to develop, build, and complete a multifamily project. Form HUD–92417 is a part of the credit investigation during the Site Appraisal and Marketing Analysis (SAMA)/feasibility and commitment stages of the mortgage insurance application. The financial capability, reputation, experience, and the ability of the project sponsor is analyzed to determine whether the sponsor will be able to develop a successful project and have the financial resources to complete and maintain the property.

Agency form numbers, if applicable: HUD–92417.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total annual hours required to prepare the information collection is 16,000; the number of respondents is 2,000 generating 2,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 8 hours. This form is submitted during the SAMA/feasibility or commitment stages of the mortgage insurance application.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 26, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–1216 Filed 1–30–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability Technical/Agency Draft of the Third Revision of the Florida Panther Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service announces the availability of the Technical/Agency Draft of the Third Revision of the Florida Panther Recovery Plan. The Florida panther (*Puma concolor coryi*) has disappeared from more than 95 percent of its historic range as a result of human persecution and habitat loss. This draft of the recovery plan includes specific recovery objectives and criteria to be met in order to reclassify (downlist) and eventually delist the Florida panther under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment on this draft recovery plan.

DATES: In order to be considered, we must receive comments on the draft recovery plan on or before April 3, 2006.

ADDRESSES: Copies of the Technical/Agency Draft of the Third Revision of the Florida Panther Recovery Plan can be obtained by contacting the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960 (772–562–3909) or by visiting our Web sites at *http://endangered.fws.gov* or *http://verobeach.fws.gov*. If you wish to comment, you may submit your comments by either of two methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960, or fax your comments to (772) 562–4288.

Comments and materials received are available for public inspection on request, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Belden at the South Florida Ecological Services Office, (772) 562–3909, ext. 237.

SUPPLEMENTARY INFORMATION:

Background

Restoring listed animals and plants to the point where they are again secure, self-sustaining components of their ecosystems is a primary goal of our threatened and endangered species program. To help guide the recovery effort, we prepare recovery plans for listed species native to the United States, pursuant to section 4(f) of the Act, unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions that may be necessary for conservation of the species, establish criteria for reclassification from endangered to threatened status or removal from the list of threatened and endangered species, and estimate the time and cost for implementing the needed recovery measures.

The Florida panther is the last subspecies of *Puma* still surviving in the eastern United States. Historically occurring throughout the southeastern United States, today the panther is restricted to less than 5 percent of its historic range in one breeding population of fewer than 100 animals, located in south Florida.

The panther is threatened with extinction, and human development in panther habitat negatively impacts recovery. Panthers are wide ranging, secretive, and occur at low densities. They require large contiguous areas to meet their social, reproductive, and energetic needs. Panther habitat selection is related to prey availability (*i.e.*, habitats that make prey vulnerable to stalking and capturing are selected). Limiting factors for the panther are habitat availability, prey availability, and lack of human tolerance.

Habitat loss, degradation, and fragmentation are among the greatest threats to panther survival, while human intolerance of panthers is one of the greatest threats to their recovery. Vehicle strikes and problems associated with being a single, small, isolated population have continued to keep the panther population at its current low numbers. Potential panther habitat throughout the Southeast continues to be affected by urbanization, residential development, conversion to agriculture and silviculture, mining and mineral

exploration, and lack of land use planning that recognizes panther needs. Public opinion is critical to attainment of recovery goals and reintroduction efforts. Addressing social opposition to panthers will be the most difficult aspect of panther recovery and must be resolved before reintroduction efforts are initiated.

The Service issued the first Florida Panther Recovery Plan in 1981. The plan was revised in 1987 and 1995. In 2001, the Service initiated the current process to revise the plan a third time. Section 4(f) of the Act requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. Accordingly, the Technical/Agency Draft of the Third Revision of the Florida Panther Recovery Plan is being made available for public review and comment before a decision is made on its approval.

The strategy for Florida panther recovery sets an intermediate goal of downlisting from endangered to threatened with the ultimate goal of delisting. To achieve both the intermediate and ultimate goals, the recovery plan identifies three objectives which, collectively, describe the conditions necessary to achieve recovery. These objectives are:

1. Maintain, restore, and expand the Florida panther population and its habitat in south Florida and, if feasible, expand the known occurrence of Florida panthers north of the Caloosahatchee River to maximize the probability of the long-term persistence of this metapopulation.

2. Identify, secure, maintain, and restore habitat in potential reintroduction areas within the panther's historic range, and establish viable populations of the panther outside south and south-central Florida.

3. Facilitate panther conservation and recovery through public awareness and education.

To realize these objectives for downlisting and delisting, this plan presents objective, measurable criteria that when met would result in a determination that delisting is warranted. These criteria are based on the number of individuals and number of populations that provide for demographically and genetically viable populations as determined by several population viability analyses to ensure resilience to catastrophic events. The threats to the Florida panther will need to be addressed to attain these criteria.

Downlisting of the Florida panther should be considered when:

1. Two viable populations of at least 240 individuals (adults and subadults) each have been established and subsequently maintained for a minimum of 14 years (or two generations).

2. Sufficient habitat quality, quantity, and spatial configuration to support these populations is retained/protected or secured in the long term.

Delisting of the Florida panther should be considered when:

1. Three viable, self-sustaining populations of at least 240 individuals (adults and subadults) each have been established and subsequently maintained for a minimum of fourteen years.

2. Sufficient habitat quality, quantity, and spatial configuration to support these populations is retained/protected or secured in the long-term.

A viable population, for purposes of Florida panther recovery, has been defined as one in which there is a 95 percent probability of persistence for 100 years. This population may be distributed in a metapopulation structure composed of subpopulations that total the appropriate number of individuals. There must be exchange of individuals and gene flow among subpopulations. For downlisting, exchange of individuals and gene flow can be either natural or through management. If managed, a commitment to such management must be formally documented and funded. For delisting, exchange of individuals and gene flow among subpopulations must be natural (*i.e.*, not manipulated or managed). Habitat should be in relatively unfragmented blocks that provide for food, shelter, and characteristic movements (*e.g.*, hunting, breeding, dispersal, and territorial behavior) and support each metapopulation at a density of 2 to 3 animals per 100 square miles (259 square kilometers), resulting in a minimum of 8,000 to 12,000 square miles (20,720 to 31,080 square kilometers) per metapopulation of 240 panthers.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to a decision on final approval of the revised recovery plan.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 11, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. 06–825 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Snoqualmie Tribe of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Associate Deputy Secretary made a final agency determination to acquire approximately 55.84 acres of land into trust for the Snoqualmie Tribe of Washington on January 13, 2006. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Acting Deputy Assistant Secretary—Policy and Economic Development, MS–4600 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR Part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR Part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On January 13, 2006, the Associate Deputy Secretary decided

to accept approximately 55.84 acres of land into trust for the Snoqualmie Tribe of Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 55.84 parcel is located in King County, Washington. The parcel will be used for the purpose of construction and operation of a class III gaming facility.

The real property consists of a 55.84 acre tract located in King County, Washington. The legal description of the property is as follows:

Lot 1, Block 3 of the unrecorded plat of Si-View acre tracts, more particularly described as follows: Beginning at a point on the south line of the NW. quarter of section 31, Township 24 North, Range 8 East, Willamette Meridian, in King County, Washington, 750.75 feet South 88 degrees 51′11″ West of the SE corner of said NW. quarter, thence South 88 degrees 51′11″ West, 660.36 feet; thence North 3 degrees 02′25″ West 308.18 feet; thence North 86 degrees 57′35″ East, 660.00 feet to the west line of a 60.0 foot street; thence South 3 degrees 02′25″ East along said street, 330.0 feet to the point of beginning;

Except that portion of Lot 1, Block 3 of the unrecorded plat of Si-View acre tracts, in Section 31, Township 24 North, Range 8 East, Willamette Meridian, in King County, Washington, described as follows: Beginning at the NE. corner of the above described Lot 1; thence South 86 degrees 57′35″ West a distance of 311.14 feet along the north boundary of said Lot 1; thence South 3 degrees 02′25″ East a distance of 140.00 feet; thence North 86 degrees 57′35″ East a distance of 311.14 feet to the east boundary line of said Lot 1; thence North 3 degrees 02′25″ West a distance of 140.00 feet along the east boundary of said Lot 1 to the point of beginning.

And, all of Government Lot 3 and that portion of Government Lot 4, lying northerly of the north margin of SR 90 (State Highway Number 2); section 31, township 24 North, Range 8 East, Willamette Meridian, King County, Washington.

Containing a total of 55.84 acres, more or less.

Dated: January 13, 2006.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. E6–1198 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of class III gaming compact taking effect.

SUMMARY: Notice is given that the Tribal-State compact between the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin is considered to have been approved and is in effect.

DATES: *Effective Date:* January 31, 2006.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 (d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compacts that are approved, or considered to have been approved, for the purpose of engaging in class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that is 45 days after the date this compact was submitted. This compact authorizes this Indian tribe to engage in certain class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this compact is considered to have been approved, but only to the extent it is consistent with IGRA.

Dated: January 18, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–1197 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state class III gaming compact.

SUMMARY: This Notice Publishes an Approval of the Economic Development Amendment for the Tribal-State Compact for the Regulation of Class III Gaming between the Tunica-Biloxi Tribe and the State of Louisiana.

DATES: *Effective Date:* January 31, 2006.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the Economic Development Amendment to the Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. This Economic Development Amendment provides for a grant of presumptive suitability for certain lenders solely in connection with and strictly limited to that certain offering of unsecured senior notes dated November 8, 2005. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Economic Development Amendment to the Tribal-State compact between Tunica-Biloxi Tribe and the State of Louisiana is hereby approved and in effect.

Dated: January 20, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–1196 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1120–PH]

Notice of Cancellation of February Resource Advisory Council Meeting in Twin Falls District, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Cancellation of February Resource Advisory Council Meeting in Twin Falls District, Idaho.

SUMMARY: This notice announces the cancellation of the Resource Advisory Council (RAC) meeting scheduled for Tuesday, February 7, 2006, in Twin Falls, Idaho.

SUPPLEMENTARY INFORMATION: The decision to cancel this previously scheduled meeting has been made due to efforts to fill a vacancy among the RAC members, as well as ongoing informational agenda items waiting for future decisional periods. Further scheduled meeting will still be held and published in upcoming notices of the **Federal Register**. A news release announcing the meeting cancellation will also be sent to Twin Falls area media outlets, thus complying with the steps indicated in the RAC charter to achieve such a cancellation.

FOR FURTHER INFORMATION CONTACT: Sky Buffat, Twin Falls District, Idaho 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 735–2068.

Dated: January 25, 2006.

Bill Baker,

Twin Falls District Associate Manager.

[FR Doc. E6–1185 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

North Sonoma County Agricultural Reuse Project Sonoma County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS/Environmental Impact Report (EIR), and notice of public scoping meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and Public Resources Code, Section 21000–21178.1 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the lead Federal agency, and the Sonoma County Water Agency (Agency), the lead State agency, propose to prepare a joint EIS/EIR for the proposed North Sonoma County Agricultural Reuse Project (Project).

The purpose of the proposed Project is to: (1) Reduce agricultural reliance on natural regional water supplies; (2) provide an alternative source of water for agricultural irrigation; and (3) address potential regulatory issues.

DATES: A scoping meeting will be held on February 16, 2006 from 5:30 p.m. to 8 p.m. in Healdsburg, California to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to the proposed Project. Written comment forms will be supplied for those who wish to submit written comments at the scoping meeting.

ADDRESSES: The public scoping meeting will be held at Alexander Valley Community Hall, 5512 Highway 128, Healdsburg, California.

Send written comments on the scope of the project to Mr. David Cuneo, Sonoma County Water Agency, P.O. Box 11628, Santa Rosa, California 95406, no later than March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David Cuneo at telephone number: (707) 547–1935 or e-mail address: *david@scwa.ca.gov*.

SUPPLEMENTARY INFORMATION: The Agency, in its continuing efforts to develop a recycled water supply for agricultural water users in the Russian River, Alexander, and Dry Creek valley areas (North Sonoma County area) has identified up to 25,000 acres of agricultural lands that could potentially use recycled water. Based on this estimate, the Agency developed the Project. The Project would include the design and construction of storage reservoirs, conveyance and distribution pipelines, and pump stations. The water for the Project would be tertiary-treated municipal wastewater generated and conveyed primarily through the City of Santa Rosa's (City) Geysers Pipeline to the project areas. Reclamation is the federal lead agency because the Agency has entered into a cooperative funding agreement with Reclamation to provide matching funds up to $500,000 for the Project.

The purpose of the Project is to provide a reliable alternative source of agricultural water to reduce reliance on natural regional water supplies and address regional water supply and regulatory issues. The Project is needed to address current and future regulatory concerns and regional water supply issues. The public would also benefit from this project through the reduction of use of natural regional water supplies, the reduction of wastewater discharges to regional waterways, and from the resulting environmental benefit to fish and wildlife.

Two local groups, the Coalition for Sustainable Agriculture (CSA) and the Dry Creek Agricultural Water Users, Inc. (DCAWU) have expressed significant interest in participating in a recycled water project to develop alternative sources of water for existing agricultural use. The CSA and the DCAWU both recognize that increased instream demands for environmental purposes within the Russian River watershed will compete with agriculture and other uses for available water supplies in the region. The CSA and the DCAWU also recognize that the agricultural use of recycled water may benefit the environment, and consider the Project to be part of a regional water supply solution that balances the needs of municipalities, agricultural interests, and the environment.

Presently, agricultural entities divert water directly from the Russian River and its tributaries, from the underflow of the Russian River and its tributaries, and from groundwater wells. Use of recycled water for agricultural purposes on project lands would reduce reliance on the Russian River and its tributaries as well as on local groundwater wells. Additionally, Federal and State regulatory agencies have expressed concern regarding potential impacts to fisheries resources and habitat within the Russian River and its tributaries. Providing agricultural lands with an alternative source of water would allow water to remain in the Russian River and its tributaries, thus providing benefits to listed fish species and their habitat. The recycled water would be used for agricultural purposes consistent with the California Code of Regulations, Title 22 pertaining to the use of tertiary-treated recycled water.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in the entirety.

Dated: December 2, 2005.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E6–1189 Filed 1–30–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Second Review)]

Gray Portland Cement and Cement Clinker From Japan

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited 5-year review concerning the antidumping duty order on gray portland cement and cement clinker from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 6, 2006.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 6, 2006, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 57617, October 3, 2005) of the subject 5-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on April 27, 2006, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 3, 2006 and may not contain new factual information. Any person that is neither a party to the 5-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 3, 2006. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1178 Filed 1–30–06; 8:45 am]

BILLING CODE 7020–02–P

[1] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by the Committee for Fairly Traded Japanese Cement ; the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; the International Union of Operating Engineers; and Local Lodge 93, International Association of Machinists and Aerospace Workers to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Second Review)]

Internal Combustion Industrial Forklift Trucks From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2005 (70 FR 9971) and determined on June 6, 2005 that it would conduct a full review (70 FR 36657, June 24, 2005). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 7, 2005 (70 FR 39333). The hearing was held in Washington, DC, on November 1, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Secretary of Commerce on January 25, 2006. The views of the Commission are contained in USITC Publication 3831 (December 2005), entitled *Internal Combustion Industrial Forklift Trucks from Japan: Investigation No. 731–TA–377 (Second Review).*

By order of the Commission.

Issued: January 26, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1212 Filed 1–30–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,215]

Bespak, Inc. Tenax Corporation, Apex, N.C.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 2, 2005, applicable to workers of Bespak, Inc., Apex, North Carolina. The notice was published in the **Federal Register** on December 21, 2005 (70 FR 75841).

At the request of a former employee, the Department reviewed the certification for workers of the subject firm. The workers produce drug delivery devices (inhalers, bags, pumps, I.V. lines, and syringes).

The company official provided information to the Department confirming that the workers wages at the subject firm are reported under the Unemployment Insurance tax account for Tenax Corporation, which is a member of the Bespak Group.

Based on this new information, the Department is amending the certification to include workers of Bespak, Inc., Apex, North Carolina, whose wages are reported to Tenax Corporation.

The amended notice applicable to TA–W–58,215 is hereby issued as follows:

All workers of Bespak, Inc., Tenax Corporation, Apex, North Carolina, who became totally or partially separated from employment on or after October 25, 2004, through December 2, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of January 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–1179 Filed 1–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of January 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either:

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–58,468; Candor Hosiery Mills, Inc., Distribution Center, Robbins, NC: December 5, 2004.
TA–W–58,468A; Candor Hosiery Mills, Inc., Robbins, NC: December 5, 2004.
TA–W–58,482; Dan River Inc., Home Fashions Sewing, Morven, NC: December 8, 2004.
TA–W–58,530; Fiskars Brands, Inc., SOC Division, Wausau, WI: December 5, 2004.
TA–W–58,553; Precision Source, P&C Quality Turned Components, Esmond, RI: December 28, 2004.
TA–W–58,424; Quality Manufacturing, Inc., Winchester, KY: November 22, 2004.
TA–W–58,341; Alene Candles, Inc., Placement Pros, Valley Employment & ET Staffing, Putnam, CT: November 14, 2004.
TA–W–58,393; E.J. Snyder and Company, Inc., Albemarle, NC: November 18, 2004.
TA–W–58,411; Phibro-Tech, Inc., Sumter Manufacturing Plant, Sumter, SC: November 22, 2004.
TA–W–58,415; El Paso Garment Contractors, Inc., El Paso, TX: November 28, 2004.
TA–W–58,449; Mississippi Polymers, Inc., Corinth, MS: November 30, 2004.
TA–W–58,450; Bay Engineered Castings, New Contracting, Ahead, Custom Staff, ABR, De Pere, WI: November 30, 2004.
TA–W–58,451; Textron Fastening Systems (TFS), TFS Greenville Operations, Greenville, MS: November 10, 2004.
TA–W–58,458; Hitchcock Chair Company, Hitchcock Holdings, New Hartford, CT: December 2, 2004.
TA–W–58,463; Nexus Custom Electronics Corp., Woburn, MA: November 30, 2004.
TA–W–58,501; Tinnerman Palnut, Textron Fastening Systems, Flemingsburg, KY: December 12, 2004.
TA–W–58,504; Yankee Plastics, Inc., Easthampton, MA: November 14, 2004.
TA–W–58,508; Occidental Chemical Corp. (OxyChem), Subsidiary of Occidental Petroleum Corp., New Castle, DE: December 15, 2004.
TA–W–58,513; Apricot, Inc., Hartford, NC: December 7, 2007.
TA–W–58,383; Diversco Integrated Services, Murray Ohio Plant, Lawrenceburg, TN: November 18, 2004.
TA–W–58,544; Wickers Sportswear, Inc., Wolfeboro, NH: December 21, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–58,441; Caldwell Manufacturing Company, Jackson, MS: November 22, 2004.
TA–W–58,438; Palliser Furniture Corp., Carolina Division, Troutman, NC: November 30, 2004.
TA–W–58,478; Rich Products Manufacturing Corp., Winchester, VA: December 1, 2004.
TA–W–58,521; Dan River, Inc., Home Fashions Division, Brookneal, VA: December 19, 2004.
TA–W–58,543; Procon Products, Murfreesboro, TN: December 9, 2004.
TA–W–58,399; Applied Interconnect, Sunnyvale, CA: November 11, 2004.
TA–W–58,498; McLaughlin Company, Petosky, MI: December 9, 2004.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA–W–58,579; Easthampton Dye Works, Inc., Easthampton, MA: January 4, 2005.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,454; Metso Automation, Field Systems Division, Shrewsbury, MA.
TA–W–58,445; Christiana Floral, Inc., Christiana, PA.
TA–W–58,515; Ablest Staffing Services, Granite Quarry, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,277; Quin-T Corp., Erie, PA.
TA–W–58,402; Pressed Steel Tank, West Allis, WI.
TA–W–58,417; MacLean-ESNA, Pocahontas, AR.
TA–W–58,427; Pure-Flo Precision, Div. of ITT Industries, Inc., Springfield, MO.
TA–W–58,444; Johnson Controls, Inc., Automotive Systems Group, Earth City, MO.
TA–W–58,473; National Textiles, Plant #1, China Grove, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.)(Increased imports and (a) (2) (B) (II.C) (has shifted production to a foreign country) have not been met.

None.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,486; Hewlett-Packard Company, Omaha, NE.
TA–W–58,446; Boise Cascade Corporation, Cascade, ID.
TA–W–58,464; South-Eastern Fabrics Corp., Conover, NC.
TA–W–58,474; IBM Global Services, Oakbrook Helpdesk, Oakbrook, IL.
TA–W–58,547; Nicholson Manufacturing Company, Seattle, WA.
TA–W–58,554; Logistics Services, Inc., Oklahoma City, OK.
TA–W–58,577; Dystar LP, Charlotte, NC.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–58,354; Creform Corporation, Textube Division, Greer, SC.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–58,468; Candor Hosiery Mills, Inc., Distribution Center, Robbins, NC: December 5, 2004.
TA–W–58,468A; Candor Hosiery Mills, Inc., Robbins, NC: December 5, 2004.
TA–W–58,482; Dan River Inc., Home Fashions Sewing, Morven, NC: December 8, 2004.
TA–W–58,530; Fiskars Brands, Inc., SOC Division, Wausau, WI: December 5, 2004.
TA–W–58,553; Precision Source, P&C Quality Turned Components, Esmond, RI: December 28, 2004.
TA–W–58,341; Alene Candles, Inc., Placement Pros, Valley Employment & ET Staffing, Putnam, CT: November 14, 2004.
TA–W–58,393; E.J. Snyder and Company, Inc., Albemarle, NC: November 18, 2004.
TA–W–58,411; Phibro-Tech, Inc., Sumter Manufacturing Plant, Sumter, SC: November 22, 2004.
TA–W–58,415; El Paso Garment Contractors, Inc., El Paso, TX: November 28, 2004.
TA–W–58,449; Mississippi Polymers, Inc., Corinth, MS: November 30, 2004.
TA–W–58,450; Bay Engineered Castings, New Contracting, Ahead, Custom Staff, ABR, De Pere, WI: November 30, 2004.
TA–W–58,451; Textron Fastening Systems (TFS), TFS Greenville Operations, Greenville, MS: November 10, 2004.
TA–W–58,458; Hitchcock Chair Company, Hitchcock Holdings, New Hartford, CT: December 2, 2004.
TA–W–58,463; Nexus Custom Electronics Corp., Woburn, MA: November 30, 2004.
TA–W–58,501; Tinnerman Palnut, Textron Fastening Systems, Flemingsburg, KY: December 12, 2004.
TA–W–58,504; Yankee Plastics, Inc., Easthampton, MA: November 14, 2004.
TA–W–58,508; Occidental Chemical Corp. (OxyChem), Subsidiary of Occidental Petroleum Corp., New Castle, DE: December 15, 2004.
TA–W–58,513; Apricot, Inc., Hartford, NC: December 7, 2007
TA–W–58,383; Diversco Integrated Services, Murray Ohio Plant, Lawrenceburg, TN: November 18, 2004.
TA–W–58,544; Wickers Sportswear, Inc., Wolfeboro, NH: December 21, 2004.
TA–W–58,438; Palliser Furniture Corp., Carolina Division, Troutman, NC: November 30, 2004.
TA–W–58,478; Rich Products Manufacturing Corp., Winchester, VA: December 1, 2004.
TA–W–58,521; Dan River, Inc., Home Fashions Division, Brookneal, VA: December 19, 2004.
TA–W–58,543; Procon Products, Murfreesboro, TN: December 9, 2004.
TA–W–58,399; Applied Interconnect, Sunnyvale, CA: November 11, 2004.
TA–W–58,498; McLaughlin Company, Petosky, MI: December 9, 2004.
TA–W–58,579; Easthampton Dye Works, Inc., Easthampton, MA: January 4, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,454; Metso Automation, Field Systems Division, Shrewsbury, MA.
TA–W–58,277; Quin-T Corp., Erie, PA.
TA–W–58,402; Pressed Steel Tank, West Allis, WI.
TA–W–58,417; MacLean-ESNA, Pocahontas, AR.
TA–W–58,427; Pure-Flo Precision, Div. of ITT Industries, Inc., Springfield, MO.
TA–W–58,444; Johnson Controls, Inc., Automotive Systems Group, Earth City, MO.
TA–W–58,445; Christiana Floral, Inc., Christiana, PA.
TA–W–58,473; National Textiles, Plant #1, China Grove, NC.
TA–W–58,515; Ablest Staffing Services, Granite Quarry, NC.
TA–W–58,486; Hewlett-Packard Company, Omaha, NE.
TA–W–58,446; Boise Cascade Corporation, Cascade, ID.
TA–W–58,464; South-Eastern Fabrics Corp., Conover, NC.
TA–W–58,474; IBM Global Services, Oakbrook Helpdesk, Oakbrook, IL.
TA–W–58,547; Nicholson Manufacturing Company, Seattle, WA.
TA–W–58,554; Logistics Services, Inc., Oklahoma City, OK.
TA–W–58,577; Dystar LP, Charlotte, NC.
TA–W–58,354; Creform Corporation, Textube Division, Greer, SC.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,424; Quality Manufacturing, Inc., Winchester, KY: November 22, 2004.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of January 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 24, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–1193 Filed 1–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,022]

Meadow River Hardwood Lumber Company; Formerly Known as Georgia-Pacific Corp.; Rainelle, WV; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 8, 2005, Carpenters East Coast Industrial Council (CECIC) requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 24, 2005, and published in the **Federal Register** on November 16, 2005 (70 FR 69599).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Meadow River Hardwood Lumber Company, f/k/a Georgia-Pacific Corp., Rainelle, West Virginia engaged in production of hardwood lumber was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The investigation revealed that workers separations at the subject firm was attributed to an employee-strike and not increased imports or a shift in production to a foreign country.

The petitioner stated that there was no stoppage of work due to a labor dispute, but rather the company was loosing its sales due to increased imports. The petitioner attached a list of customers and requested a customer survey be conducted in order to reveal the import impact.

Upon further review of the previous investigation and further contact with the company official the Department conducted a full investigation to determine whether imports of hardwood lumber indeed impacted production at the subject firm and consequently caused workers separations.

The investigation revealed that customers provided by the petitioner were former customers of Georgia-Pacific Corp., but were no longer customers of Meadow River Hardwood Lumber Company.

The company official provided a list of major customers of the subject firm. The Department conducted a survey of these customers regarding their purchases of hardwood lumber during the relevant time period. The survey revealed that only one customer is importing hardwood lumber, however this customer did not decrease its purchases of hardwood lumber from the subject firm. Moreover, the subject firm does not import hardwood lumber and did not shift production of hardwood lumber abroad.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of January, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–1103 Filed 1–30–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,268]

Simpson Door Company, McCleary Washington Division, McCleary, WA; Notice of Revised Determination on Reconsideration

By letter postmarked December 16, 2005 United Brotherhood of Carpenters and Joiners of America, Local Union No. 2761 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on November 23, 2005 was based on the finding that the subject company did not separate or threaten to separate a significant number or proportion of workers during the relevant time period, as required by section 222 of the Trade Act of 1974. The denial notice was published in the **Federal Register** on December 15, 2005 (70 FR 74368).

To support the request for reconsideration, the petitioner supplied additional information regarding employment at the subject facility. Upon further contact with the subject firm's company official, it was revealed that the subject firm separated a significant number of workers during the relevant time period. The investigation also revealed that the subject firm decreased production of wood stile and rail doors while increasing imports of wood stile and rail doors during the relevant time period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Simpson Door Company, McCleary Washington Division, McCleary, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Simpson Door Company, McCleary Washington Division, McCleary, Washington who became totally or partially separated from employment on or after November 3, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of January 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–1192 Filed 1–30–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies, practices, and initiatives. The purpose of the meeting is to have an open discussion between NASA's Assistant Administrator for Procurement, industry, and the public.

Note: This is not a meeting about how to do business with NASA for new firms, nor will it focus on small businesses or specific contracting opportunities. Position papers are not being solicited.

DATES: Wednesday, March 8, 2006, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at NASA Johnson Space Center's Robert R.

Gilruth Center in the Lone Star Room (second floor of Gilruth Center), Houston, TX 77058. Please access the Gilruth Center through Gate 5 off of Space Center Boulevard (view map at *http://jsc-web-pub.jsc.nasa.gov/bd01/Index.htm*).

FOR FURTHER INFORMATION CONTACT: Barbara Kirkland, NASA Johnson Space Center, Mail Code BD35, Houston, TX 77058, (281) 483–4512 or (281) 483–4511, e-mail: *barbara.j.kirkland@nasa.gov*.

SUPPLEMENTARY INFORMATION:

Admittance: Admittance will be on a first-come, first-served basis. Room capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Access/visitor badging is not required.

Format: There will be a presentation by the Assistant Administrator for Procurement, followed by a question and answer period. Questions for the open forum should be presented at the meeting and should not be submitted in advance.

Tom Luedtke,

Assistant Administrator for Procurement.

[FR Doc. E6–1152 Filed 1–30–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 2, 2006.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0143.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 760 Loans in Areas Having Special Flood Hazards.

Description: Federally insured credit unions are required by statute and by 12 CFR Part 760 to file reports, make certain disclosures and keep records. Borrowers use this information to make valid purchase decisions. The NCUA uses the records to verify compliance.

Respondents: All federal credit unions.

Estimated No. of Respondents/Recordkeepers: 5,350.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Recordkeeping, Reporting, and on occasion.

Estimated Total Annual Burden Hours: 154,850.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on January 23, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1167 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax No. 703–837–2861. E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–NEW.

Form Number: N/A.

Type of Review: New collection.

Title: NCUA Economic Development Specialist Direct Assistance Survey.

Description: The survey will provide federally insured credit unions with an opportunity to give NCUA feedback on direct assistance provided by economic development specialists. NCUA will use the information to evaluate and improve the National Small Credit Union Program.

Respondents: Small Credit Unions.

Estimated No. of Respondents/Record keepers: 300.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: Semi-annually.

Estimated Total Annual Burden Hours: 150 hours.

Estimated Total Annual Cost: $471.00.

By the National Credit Union Administration Board on January 23, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1168 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Records Preservation Under 12 CFR Part 749.

Description: Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises and maintain a log about the stored information.

Respondents: All credit unions.

Estimated No. of Respondents/Record keepers: 9,128.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 18,256.

Estimated Total Annual Cost: $912,800.

By the National Credit Union Administration Board on January 23, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1169 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations direct corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Record keepers: 31.

Estimated Burden Hours per Response: 2,434 hours.

Frequency of Response: Reporting, recordkeeping, on occasion, monthly, quarterly and annually.

Estimated Total Annual Burden Hours: 75,454 hours.

Estimated Total Annual Cost: $1,937,996.

By the National Credit Union Administration Board on January 23, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1170 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax No. 703–837–2861. E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0141.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR part 701.22 Organization and Operation of Federal Credit Unions—Loan Participations.

Description: NCUA has authorized federal credit unions to engage in loan participations, provided they establish written policies and enter into a written loan participation agreement. NCUA believes written policies are necessary to ensure a plan is fully considered before being adopted by the Board.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/Record keepers: 1,000.

Estimated Burden Hours per Response: 4 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: $100,000.

By the National Credit Union Administration Board on January 19, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1171 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Federal Credit Union (FCU) Recordkeeping of Meeting Minutes and Other Documents.

OMB Number: 3133–0057.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Description: The Federal Credit Union (FCU) Act and NCUA's FCU Bylaws require each FCU to prepare and maintain minutes of its board and member meetings and copies of other documents and election results. Additionally, the board's secretary must inform the NCUA Board of any address change of a federal credit union.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,572.

Estimated Burden Hours Per Response: 3.25 hours.

Frequency of Response: Recordkeeping and reporting on occasion and annually.

Estimated Total Annual Burden Hours: 19,223.4 hours.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on January 19, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–1172 Filed 1–30–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Meetings; Sunshine Act

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, February 7, 2006.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7743: *Highway Accident Report*—Collision Between a Ford Dump Truck and Four Passenger Cars, Glen Rock, Pennsylvania, April 11, 2003.

7754: *Highway Accident Report*—Passenger Vehicle Median Crossover and Head-On Collision With Another Passenger Vehicle, Linden, New Jersey, May 1, 2003

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, February 3, 2006.

The pubic may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsh.gov*.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 27, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–938 Filed 1–27–06; 1:52 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 51, Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions.

2. *Current OMB approval number:* 3150–0021.

3. *How often the collection is required:* On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewals, early site review, design certification review, decommissioning or termination review, manufacturing licensing, materials license, or upon submittal of a petition for rulemaking.

4. *Who is required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70, and 72.

5. *The number of annual respondents:* 29.

6. *The number of hours needed annually to complete the requirement or request:* 113,596.

7. *Abstract:* 10 CFR part 51 specifies information to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Submit, by April 3, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC

home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 24th of January 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–1293 Filed 1–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 30, February 6, 13, 20, 27, March 6, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 30, 2006

Tuesday, January 31, 2006

9:25 a.m. Affirmation Session (Public Meeting).

a. FIRSTENERGY Nuclear Operating Co. (Beaver Valley Power Station, Unit Nos. 1 & 2; Davis Besse Power Station, Unit 1; Perry Nuclear Power Plant, Unit No. 1), Docket Nos. 50–334–LT, 50–346–LT, 50–412–LT, & 50–440–LT.

b. Private Fuel Storage (Independent Spent Fuel Storage installation) Docket No. 72–22–ISFSI.

c. Motion to Reopen the Millstone License Renewal Proceedings Filed by Connecticut Coalition Against Millstone.

9:30 a.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Public Meeting). (Contact: Kristen Davis, 301–415–7108.)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Wednesday, February 1, 2006

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Thursday, February 2, 2006

1:30 p.m. Briefing on Sensitive Unclassified Non-Safeguards Information (SUNSI) Policy (Public Session and Closed Session—Ex. 2). (Contact: Edward Baker, 301–415–8700.)

Open portion of this meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of February 6, 2006—Tentative

Monday, February 6, 2006

9:30 a.m. Briefing on Materials Degradation Issues and Fuel Reliability (Public Meeting). (Contact: Jennifer Uhle, 301–415–6200.)

This meeting will be webcast live at the Web address *http://www.nrc.gov*

2 p.m. Discussion of Security Issues (Closed—Ex. 1).

Wednesday, February 8, 2006

9:30 a.m. Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting). (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677.)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

1:30 p.m. Briefing on Office of Research (RES) Programs, Performance and Plans (Public Meeting). (Contact: Gene Carpenter, 301–415–7333.)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Week of February 13, 2006—Tentative

Tuesday, February 14, 2006

2 p.m. Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting). (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677.)

The meeting will be webcast live at the Web address *http://www.nrc.gov.*

Wednesday, February 15, 2006

9:30 a.m. Briefing on Office of Chief Financial Officer (CFO) Programs, Performance, and Plans (Public Meeting). (Contact: Edward New, 301–415–5646.)

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of February 20, 2006—Tentative

There are no meetings scheduled for the Week of February 20, 2006.

Week of February 27, 2006—Tentative

There are no meetings scheduled for the Week of February 27, 2006.

Week of March 6, 2006—Tentative

There are no meetings scheduled for the Week of March 6, 2006.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 26, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–925 Filed 1–27–06; 11:26 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make

immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 6, 2006 to January 19, 2006. The last biweekly notice was published on January 17, 2006 (71 FR 2586).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no

significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 23, 2005.

Description of amendments request: The amendments would increase the emergency diesel generator (EDG) allowed out of service time (AOT) from 72 hours to 10 days, allow EDG starting air receiver pressure to momentarily drop below limits during successful starting of an EDG, and remove from the Technical Specifications the statement that the two groups of pressurizer heaters are capable of being powered from an emergency power supply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) change to increase the emergency diesel generator (EDG) allowed out of service time (AOT) from 72 hours to 10 days will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The EDGs are not accident initiators. The EDGs are designed to mitigate the consequences of previously evaluated accidents including a loss of offsite power. Extending the AOT for a single EDG would not affect the previously evaluated accidents since the remaining EDG supporting the redundant Engineered Safety Features (ESF) systems would continue to be available to perform the accident mitigation functions. The duration of this TS AOT considers that there is a minimal possibility that an accident will occur while a component is removed from service. A risk informed assessment was performed which concluded that the increase in plant risk is small and consistent with the guidance contained in Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications.'' The design basis accidents will remain the same postulated events described in the PVNGS [Palo Verde Nuclear Generating Station] Updated Final Safety Analysis Report (UFSAR). In addition, extending the EDG AOT will not impact the consequences of an accident previously evaluated. The consequences of previously evaluated accidents will remain the same during the proposed 10 day AOT as during the current 72 hour AOT. The ability of the remaining TS-required EDG to mitigate the consequences of an accident will not be affected since no additional failures are postulated while equipment is inoperable within the TS AOT. The remaining EDG is sufficient to mitigate the consequences of any design basis accident.

The proposed addition of a note to Condition F of TS 3.8.3, would allow EDG starting air receiver pressure to momentarily drop below limits during successful starting of an EDG. The EDG air starting system will not be operated or be configured any differently than that which it is currently required and designed for. This proposed change will only add a note for clarification to Condition F of TS 3.8.3. This note describes entering this Condition is not necessary when the EDG starts normally and is operating per required procedures. Momentary transients outside the air receiver pressure range do not invalidate the successful start and running of the EDG. A successful start of the EDG indicates the starting air system has performed its required safety function. This proposed change will not increase the probability or consequence of an accident previously evaluated.

The proposed TS change associated with the requirements for the pressurizer heaters to be supplied by emergency power will not result in any change in plant design. These components will continue to be powered from Class 1E power sources as described in the proposed TS Bases change associated with this change. As a result, the operation and reliability of the pressurizer heaters will not be affected by the proposed description change. In addition, operation of the pressurizer heaters is not assumed to mitigate any design basis accident. The proposed changes will not cause an accident to occur and will not result in a change in the operation of any accident mitigation equipment. The design basis accidents remain the same postulated events described in the PVNGS UFSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different [kind of] accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a change in the design, configuration, or method of operation of the plant that could create the possibility of a new or different [kind of] accident. Equipment will be operated in the same configuration and manner that is currently allowed and designed for. The proposed changes do not introduce any new failure modes. This license amendment request does not impact

any plant systems that are accident initiators or adversely impact any accident mitigating systems.

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The EDG reliability and availability are monitored and evaluated, in accordance with 10 CFR 50.65 (Maintenance Rule) performance criteria, to assure EDG out of service times do not degrade operational safety over time. Extension of the EDG AOT will not erode the reduction in severe accident risk that was achieved with implementation of the Station Blackout (SBO) rule (10 CFR 50.63) or affect any safety analyses assumptions or inputs. The SBO coping analysis is unaffected by the AOT extension since the EDGs are not assumed to be available during the coping period. The assumptions used in the coping analysis regarding EDG reliability are unaffected since preventive maintenance and testing will continue to be performed to maintain the reliability assumptions.

Accident mitigation functions will be maintained by the other TS-required EDG availability to supply power to the safety related Class 1E electrical loads. The availability of the TS-required offsite power, combined with the availability of the PVNGS SBO Gas Turbine Generators (GTGs) and the use of the Configuration Risk Management Program required by 10 CFR 50.65(a)(4), provide adequate compensation for the small incremental increase in plant risk of the proposed EDG AOT extension. This small increase in plant risk while operating is offset by a reduction in shutdown risk resulting from the increased availability and reliability of the EDGs during refueling outages, and avoiding transition risk incurred during unplanned plant shutdowns. In addition, the calculated risk measures associated with the proposed AOT are below the acceptance criteria defined in Regulatory Guide 1.177.

The proposed change to add a note to Condition F of TS 3.8.3 does not involve changes to setpoints or limits established or assumed by the accident analyses. This note only applies to those occasions when after a successful start of an EDG has occurred and the starting air receiver pressure has momentarily dropped below its limit. This change allows for not declaring the EDG inoperable solely due to this momentary drop in pressure during a successful start of the EDG. No safety margin will be impacted by this change.

The proposed TS change associated with the wording description of LCO [Limiting Condition of Operation] 3.4.9, ''Pressurizer,'' for the requirement of the pressurizer heaters to be supplied by emergency power does not adversely affect equipment design or operation, and there are no changes being made to the TS-required safety limits or system settings that would adversely affect plant safety. The emergency power requirements for the pressurizer heaters, which came from the Three Mile Island (TMI) action item requirement II.E.3.1, ''Emergency Power Requirements for Pressurizer Heater,'' of NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' will continue to be met. The pressurizer heaters used to satisfy the NUREG–0737 and LCO 3.4.9 requirements are, by design, permanently connected to Class 1E power supplies as described in the PVNGS Updated Final Safety Analyses Report, Section 18.II.E.3.1.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Branch Chief: David Terao.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: November 15, 2005.

Description of amendment request: The proposed change modifies the technical specifications (TS) to clarify the wording of emergency closed cooling water (ECCW) Surveillance Requirement (SR) 3.7.10.2. The current wording in SR 3.7.10.2 requires that automatic valves on the ECCW system actuate on an actuation signal. However, the TS Bases for the SR identify more than just valves tested to include the automatic start capability of the ECCW pump in each subsystem. Therefore, the wording of this SR would be modified to clarify that its purpose is to verify actuation of the entire subsystem on an actual or simulated signal, rather than just verify valve actuation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no physical modifications being made to any plant system or component. The only change is to a Surveillance Requirement within the Technical Specifications, in order to improve understanding and avoid misinterpretation of the requirements. The original intent of ECCW SR 3.7.10.2 is maintained by the change being proposed. The revised Technical Specification requirements do not impact initiators of previously evaluated accidents or transients.

The specification being revised is associated with a system used to mitigate the consequences of accidents. The change to the wording of ECCW SR 3.7.10.2 does not impact the capability of the associated system to perform its required function. The reworded ECCW SR more clearly requires that the system[']s total actuation capability be maintained.

The change does not affect how plant systems are controlled or operated or tested. The change continues to provide confirmation of the capability of plant components to respond as required to mitigate the consequences of events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical modifications being made to any plant system or component, and the proposed change introduces no new method of operation of the plant, or its systems or components. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The change to the ECCW SR continues to ensure the ECCW subsystems are tested on the same periodicity to verify their capability to respond to actuation signals from the Emergency Core Cooling System (ECCS) Instrumentation Functions of Low Water Level and High Drywell Pressure. Therefore, the necessary function of the Technical Specification requirements is maintained, and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GHE–107, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Mindy Landau, Acting.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: December 13, 2005.

Description of amendment request: The proposed amendments would revise technical specification (TS) requirements for surveillance

requirements for containment integrated leakage rate testing in TS 5.5.14.a to allow a one-time extension of the interval between reactor containment vessel integrated leakage rate tests (ILRTs) from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment proposes to revise the Technical Specifications to allow for the one time extension of the containment integrated leakage rate test interval from 10 to 15 years. The containment vessel function is purely mitigative. There are no design basis accidents initiated by a failure of the containment leakage mitigation function. The extension of the containment integrated leakage rate test interval will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the containment integrated leakage rate test interval from 10 to 15 years. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be of a magnitude that NUREG–1493, ''Performance-Based Containment Leak-Test Program'', indicates is imperceptible. The Nuclear Management Company has also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed extension was determined to be within the guidelines published in Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis''. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. The Nuclear Management Company has determined that the increase in conditional containment failure probability from reducing the containment integrated leakage rate test frequency from 1 test per 10 years to 1 test per 15 years would be small.

Continued containment integrity is also assured by the history of successful containment integrated leakage rate tests, and the established programs for local leakage rate testing and in-service inspections which are unaffected by the proposed change. Therefore, the probability of occurrence or the consequences of an accident previously analyzed are not significantly increased.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to extend the containment integrated leakage rate test interval from 10 to 15 years does not create any new or different accident initiators or precursors. The length of the containment integrated leakage rate test interval does not affect the manner in which any accident begins. The proposed change does not create any new failure modes for the containment and does not affect the interaction between the containment and any other system. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The risk-based margins of safety associated with the containment integrated leakage rate test are those associated with the estimated person-rem per year, the large early release frequency, and the conditional containment failure probability. The Nuclear Management Company has quantified the potential effect of the proposed change on these parameters and determined that the effect is not significant. The non-risk-based margins of safety associated with the containment integrated leakage rate test are those involved with its structural integrity and leak tightness. The proposed change to extend the containment integrated leakage rate test interval from 10 to 15 years does not adversely affect either of these attributes. The proposed change only affects the frequency at which these attributes are verified. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Timothy Kobetz.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: November 18, 2005.

Description of amendment request: The proposed amendment would change the SSES 1 and 2 Technical Specifications (TSs) to implement the Average Power Range Monitor/Rod Block Monitor/Technical Specifications/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA). Specifically, the average power range monitor (APRM) flow-biased scram and rod block trip setpoints would be revised to permit operation in the MELLLA region. The current flow-biased rod block monitor (RBM) would also be replaced by a power dependent RBM implemented through the referenced proposed upgrade to a digital power range neutron monitor system (PRNMS). The change from the flow-biased RBM to the power-dependent RBM would also require new trip setpoints. In addition, the flow-biased APRM scram and rod block trip setdown requirement would be replaced by more direct power and flow-dependent thermal limits to reduce the need for APRM gain adjustments, and to allow more direct thermal limits administration during operation other than rated conditions. Finally, the proposed amendment would change the methods used to evaluate the annulus pressurization (AP), mass blowdown, and early release resulting from the postulated recirculation suction line break (RSLB).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Proposed Change No. 1: The proposed change eliminates the Average Power Range Monitor (APRM) flow-biased scram and rod block trip setpoint setdown requirements and substitutes power and flow dependent adjustments to the Minimum Critical Power Ratio (MCPR) and Linear Heat Generation Rate (LHGR) thermal limits. Thermal limits will be determined using NRC approved analytical methods. The proposed change will have no effect upon any accident initiating mechanism. The power and flow dependent adjustments will ensure that the MCPR safety limit will not be violated as a result of any Anticipated Operational Occurrence (AOO), and that the fuel thermal and mechanical design bases will be maintained. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change No. 2: The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased scram and rod block trip setpoints and the replacement of the current flow-biased RBM with a new power dependent RBM, which will be implemented using a digital Power Range Neutron Monitoring System (PRNMS). The APRM and RBM are not involved in the initiation of any

accident; and the APRM flow-biased scram and rod block functions are not credited in any PPL safety licensing analyses.

The analysis of the instrument line break event resulted in an insignificant change in the radiological consequences. The change for the instrument line break was an insignificant increase of 0.1 Rem.

Since the proposed changes will not affect any accident initiator, or introduce and initial conditions that would result in NRC approved criteria being exceeded, and since the APRM and RBM will remain capable of performing their design functions, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change No. 3: The methods used to evaluate Annulus Pressurization (AP) and mass blowdown and energy releases resulting from the postulated Recirculation Suction Line Break (RSLB) at the MELLLA conditions are changed to use more realistic, but still conservative, methods of analysis to determine an AP mass and energy release profile for AP loads resulting from the postulated RSLB. The releases resulting from the RSLB at off-rated conditions have been demonstrated to be bounded by the current design basis loads. Since the proposed changes do not affect any accident initiator and since the RSLB AP releases remain bounded by the current design basis, the proposed changes do not involve a significant increase in the probability or radiological consequences of an accident previously evaluated. Therefore the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Proposed Change No. 1: The proposed change eliminates the Average Power Range Monitor (APRM) flow-biased scram and rod block setpoint setdown requirements and substitutes power and flow dependent adjustments to the Minimum Critical Power Ratio (MCPR) and Linear Heat Generation Rate (LHGR) thermal limits. Because the thermal limits will continue to be met, no analyzed transient event will escalate into a new or different type of accident due to the initial starting conditions permitted by the adjusted thermal limits. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

Proposed Change No. 2: The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased scram and rod block trip setpoints and the replacement of the current flow-biased RBM with a new power dependent RBM, which will be implemented using a digital Power Range Neutron Monitoring System (PRNMS). Changing the formulation for the APRM flow-biased scram and rod block trip setpoints and from a flow-biased RBM to a power dependent RBM does not change their respective functions and manner of operation. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. The APRM flow-biased rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM flow-biased scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continue beyond the APRM flow-biased rod block setpoint. The power dependent RBM will prevent rod withdrawal when the power dependent RBM rod block setpoint is reached. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. In addition, operating within the expanded power flow map will not require any systems, structures or components to function differently than previously evaluated and will not create initial conditions that would result in a new or different kind of accident from any accident previously evaluated.

Proposed Change No. 3: The methods used to evaluate Annulus Pressurization (AP) and mass blowdown and energy releases resulting from the postulated Recirculation Suction Line Break (RSLB) at the MELLLA conditions are changed to use more realistic, but still conservative, methods of analysis to determine an AP mass and energy release profile for AP loads resulting from the postulated RSLB. The proposed changes to the methods of analysis to determine AP mass and energy releases resulting from the postulated RSLB do not change the design function or operation of any plant equipment. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Proposed Change No. 1: The proposed change eliminates the Average Power Range Monitor (APRM) flow-biased scram and rod block setpoint setdown requirements and substitutes power and flow dependent adjustments to the Minimum Critical Power Ratio (MCPR) and Linear Heat Generation Rate (LHGR) thermal limits. Replacement of the APRM setpoint setdown requirement with power and flow dependent adjustments to the MPR and LHGR thermal limits will ensure that margins to the fuel cladding Safety Limit are preserved during operation at other than rated conditions. Thermal limits will be determined using NRC approved analytical methods. The power and flow dependent adjustments will ensure that the MPR safety limit will not be violated as a result of any Anticipated Operational Occurrence (AOO), and that the fuel thermal and mechanical design bases will be maintained. The 10 CFR 50.46 acceptance criteria for the performance of the Emergency Core Cooling System (ECCS) following postulated Loss-Of-Coolant Accidents (LOCAs) will continue to be met. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Proposed Change No. 2: The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased scram and rod block trip setpoints and the replacement of the current flow-biased RBM with a new power dependent RBM, which will be implemented using a digital Power Range Neutron Monitoring System (PRNMS). The APRM flow-biased rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM flow-biased scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM flow-biased rod block setpoint. The RBM will continue to prevent rod withdrawal when the power dependent RBM rod block setpoint is reached. The MPR and LHGR thermal limits will be developed to ensure that fuel thermal mechanical design bases shall remain within the licensing limits during a rod withdrawal error event and to ensure that the MPR safety limit will not be violated as a result of a rod withdrawal error event. Operation in the expanded operating domain will not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Anticipated operational occurrences and postulated accident within the expanded operating domain will be evaluated using NRC approved methods. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

Proposed Change No. 3: The methods used to evaluate Annulus Pressurization (AP) and mass blowdown and energy releases resulting from the postulated Recirculation Suction Line Break (RSLB) at the MELLLA conditions are changed to use more realistic, but still conservative, methods of analysis to determine an AP mass and energy release profile for AP loads resulting from the postulated RSLB. Mass and energy releases for AP loads resulting from the postulated RSLB remain bounded by the current design basis releases. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 11, 2005.

Description of amendment request: The proposed amendment would remove the Technical Specification (TS) 3.1.5 requirement for the Standby Liquid Control (SLC) system to be operable in Operational Condition 5 (refueling) with any control rod withdrawn. Corresponding changes would also be made to the SLC Initiation sections of Tables 3.3.2–1 and 4.3.2–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to delete the operability requirement for the SLC System in OPERATIONAL CONDITION 5* (OPERATIONAL CONDITION 5 with any control rod withdrawn) does not affect the probability or consequences of an accident previously evaluated. In STARTUP and POWER OPERATION, the SLC System is required to provide shutdown capability. In HOT SHUTDOWN and COLD SHUTDOWN, control rods are not able to be withdrawn since the reactor mode switch is in Shutdown and a control rod block is applied. This provides adequate controls to ensure that the reactor remains subcritical. Design basis accident mitigation scenarios for OPERATIONAL CONDITION 5 do not depend on, or require, SLC System operability. In REFUELING mode, only a single control rod can be withdrawn from a core cell containing fuel assemblies. Demonstration of adequate shutdown margin in accordance with TS LIMITING CONDITION FOR OPERATION 3.1.1 ensures that the reactor will not become critical. Since the purpose of the SLC System is to bring the reactor to a cold shutdown condition from normal power operations and maintain it in a cold shutdown condition, there is no design basis for the SLC System to be required to be OPERABLE when only a single control rod can be withdrawn. In addition, the reactor protection system and the control rod system would continue to be able to provide protection in the unlikely event that an inadvertent criticality occurs.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR [updated final safety analysis report]. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, and no significant changes in operations are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not alter any assumptions, initial conditions, or results of any accident analyses. The purpose of the SLC System is to bring the reactor to and maintain it in a cold shutdown condition following a failure to scram during plant operations. The SLC System is not designed to terminate an inadvertent criticality during REFUELING. Shutdown margin, either demonstrated or analytically determined, in accordance with Technical Specifications and procedural controls, will assure that an inadvertent criticality event will not occur during REFUELING. In addition, the reactor protection system and control rod system provide protection in the unlikely event that an inadvertent criticality occurs. The proposed change does not affect the ability of the SLC System to achieve plant shutdown under analyzed conditions (POWER OPERATION and STARTUP).

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Darrell J. Roberts.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: October 5, 2004, as supplemented March 22, August 29, and October 31, 2005.

Brief description of amendments: The amendments revised the BVPS–1 and 2 Technical Specifications (TSs) 3/4.3.1, ''Reactor Trip System Instrumentation,'' and 3/4.3.2, ''Engineered Safety Feature Actuation Instrumentation,'' to modify steam generator (SG) level allowable value (AV) setpoints. Specifically, the TS changes increased the AVs of the SG water level-low-low setpoints from 14.6 percent and 16 percent to 19.6 percent and 20 percent of the narrow range (NR) instrument span for BVPS–1 and 2, respectively. These are the AVs of setpoints specified in TS Table 3.3–1 to initiate a reactor trip, and the actuation setpoints specified in TS Table 3.3–3 to

start the auxiliary feedwater pumps. Also, for BVPS–2, the AV of the SG water level-high-high setpoint increased from 81.1 percent to 92.7 percent of the NR span. This is the AV of a setpoint for actuation of the turbine trip and the feedwater system isolation specified in TS Table 3.3–3.

Date of issuance: January 11, 2006.

Effective date: Upon issuance and shall be implemented within 60 days.

Amendment Nos.: 270 and 152.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 23, 2004 (69 FR 68183). The supplements dated March 22, August 29, and October 31, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 2006.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 10, 2005.

Description of amendment request: The amendment revised the Seabrook Station, Unit No. 1, Technical Specifications (TSs) to extend the interval for the performance of Containment Air Lock Interlock Surveillance Requirement 4.6.1.3 from 6 months to 24 months.

Date of issuance: January 6, 2006.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 106.

Facility Operating License No. NPF–86: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29796). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 2006.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: September 1, 2005.

Brief description of amendments: The amendments delete the Technical Specification requirements for Occupational Radiation Exposure Reports and Monthly Operating Reports.

Date of Issuance: January 13, 2006.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 198 and 141.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 25, 2005 (70 FR 61661). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2006.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 21, 2005.

Brief description of amendments: The amendments delete the Technical Specification requirements for Occupational Radiation Exposure Reports and Monthly Operating Reports.

Date of issuance: January 13, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 228 and 224.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 25, 2005 (70 FR 61660).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2006.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: July 29, 2005.

Brief description of amendments: The amendments revise the units' Technical Specifications by eliminating the requirements to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: January 12, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 292, 274.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 6, 2005 (70 FR 72673). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 8, 2005, as supplemented by letter dated August 18, 2005.

Brief description of amendment: The amendment revised the Technical Specification 2.1.1.2 for the single recirculation loop Safety Limit Minimum Critical Power Ratio value to reflect results of a cycle-specific calculation.

Date of issuance: January 4, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 215.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 29, 2005 (70 FR 15944). The supplement dated August 18, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 21, 2005.

Brief description of amendment: The amendment revises the technical specifications testing frequency for the surveillance requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' Specifically, the proposed change would revise the frequency for SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.''

Date of issuance: January 5, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 216.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 25, 2005 (70 FR 61661). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 30, 2004.

Brief description of amendment: The amendment revised Table 4.2.1, ''Minimum Test and Calibration Frequency for Core Cooling, Rod Block and Isolation Instrumentation,'' of the Technical Specifications to shorten the test interval between surveillance tests for the scram discharge volume high level rod block, and the safety/relief valve low-low set logic inhibit timer.

Date of issuance: January 12, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 144.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 18, 2005 (70 FR 2892). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 11, 2005.

Brief description of amendment: The amendment deletes requirements from the Technical Specifications for annual Occupational Radiation Exposure Reports and Monthly Operating Reports.

Date of issuance: January 11, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 161.

Facility Operating License No. NPF–57: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 29, 2005 (70 FR 15946). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 25, 2005.

Brief description of amendment: The amendment revised Technical Specification 3.1.3.1, ''Control Rod Operability,'' for the condition of having one or more scram discharge volume vents or drain lines with inoperable valves.

Date of issuance: January 13, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 162.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 7, 2005 (70 FR 33217). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 11, 2005.

Brief description of amendments: The amendments deleted requirements from the Technical Specifications (TSs) for annual Occupational Radiation Exposure Reports and Monthly Operating Reports.

Date of issuance: January 11, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 270 and 251.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register***: March 29, 2005 (70 FR 15946) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2006.

No significant hazards consideration comments received: No

PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 15, 2005.

Brief description of amendments: These amendments delete the total water and steam volume of the reactor coolant system from TS 5.4.2.

Date of issuance: January 11, 2006.

Effective date: As of the date of issuance and to be implemented within 60 days.

Amendment Nos.: 269 and 250.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register***: March 29, 2005 (70 FR 15940). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 4, 2005, as supplemented by letters dated September 30 and November 8, 2005.

Brief description of amendment: The amendment supports the steam generator replacement project by temporarily allowing one of the shield building dome penetrations to be opened up to five hours a day, six days a week while in Modes 1–4 during Cycle 7 operation until entering Mode 5 at the start of the Cycle 7 refueling outage in fall 2006.

Date of issuance: January 6, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 59.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 19, 2005 (70 FR 41446). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 2006.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1 (ANO–1), Pope County, Arkansas

Date of amendment request: January 3, 2006, as supplemented by letters dated January 6 and 10, 2006.

Description of amendment request: Entergy Operations, Inc. (Entergy) requests an emergency Technical Specification (TS) change to the Steam Generator Level—Low allowable value of Limiting Condition for Operation 3.3.11, ''Emergency Feedwater [EFW] Initiation and Control (EFIC) System Instrumentation.'' Operation at 100 percent power with the current allowable value involves an increased risk of spurious EFW initiation. Therefore, Entergy requests a revised TS allowable value of ≥ 9.34 inches and a limiting trip setpoint value of ≥ 10.42 inches in order to achieve and maintain 100 percent power operation. An actuation time delay of ≤ 10.4 seconds is also proposed to minimize the possibility of inadvertent actuations during anticipated transients such as main feedwater transients or main turbine trips.

Date of issuance: January 13, 2006.

Effective date: As of the date of issuance and shall be implemented within 7 days from the date of issuance.

Amendment No.: 227.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specification.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 13, 2006.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Stawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Dated at Rockville, Maryland, this 20th day of January 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–744 Filed 1–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft NUREG–1824, ''Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications,'' Draft for Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of Draft NUREG–1824, ''Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications'' and request for public comment.

SUMMARY: The NRC is announcing the availability of Draft NUREG–1824, ''Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications Volumes 1 through 7,'' for public comment.

DATES: Comments on this document should be submitted by March 31, 2006.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to Michael Lesar, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to Michael Lesar, 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically to *NRCREP@nrc.gov.*

This document is available at the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under Accession No. ML060060541; on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html;* and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.*

FOR FURTHER INFORMATION CONTACT: Mark H. Salley, Fire Research Team, Probabilistic Risk Assessment Branch, Office of Nuclear Regulatory Research, telephone (301) 415–2840, e-mail *mxs3@nrc.gov.*

SUPPLEMENTARY INFORMATION: Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications.

Draft NUREG–1824, ''Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications''

The purpose of this document entitled ''Verification & Validation of Selected Fire Models for Nuclear Power Plant Applications'' Draft Report for Comment (NUREG–1824), is to document the verification and validation of five (5) fire modeling tools commonly used in nuclear power plant (NPP) applications. This project was performed in accordance with the guidelines described in the American Society for Testing and Materials (ASTM) Standard E 1355–04, ''Evaluating the Predictive Capability of Deterministic Fire Models.'' Under a joint Memorandum of Understanding (MOU), the NRC Office of Nuclear Regulatory Research (RES) and the Electric Power Research Institute (EPRI) have agreed to collaboratively develop this technical document to support the application of these fire modeling tools in nuclear power plants. A library of typical NPP fire scenarios, and information on the ability of specific fire models to predict the consequences of typical NPP fire scenarios are provided. Technical review of fire models is necessary to ensure that analysts can judge the adequacy of the scientific and technical basis for the models, select models appropriate for a desired use, and understand the levels of confidence that can be placed in the results predicted by the models. This work was performed using state of the art fire dynamics calculation methods/models and the most applicable fire test data. Future improvements in the fire dynamics calculation methods/models and additional fire test data may impact the results of these reports.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final NUREG–1824 for use.

Dated at Rockville, MD, this 18th day of January 2006.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. E6–1201 Filed 1–30–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Report for Comment: Office of Nuclear Reactor Regulation Standard Review Plan, Section 12.5, ''Operational Radiation Protection Program''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) has issued Section 12.5, Draft Revision 3, ''Operational Radiation Protection Program,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, LWR Edition'' for public comment.

DATES: Comments on this draft document should be submitted by April 3, 2006. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies.

ADDRESSES: NUREG–0800, including Section 12.5, draft Revision 3, is available for inspection and copying for a fee at the Commission's Public Document Room, NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG–0800, including Section 12.5, draft Revision 3 is also available electronically on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/,* and from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html.*

Members of the public are invited and encouraged to submit written comments. Comments may be accompanied by additional relevant information or supporting data. A number of methods may be used to submit comments. Written comments should be mailed to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted electronically to: *nrcrep@nrc.gov.* Comments also may be submitted electronically through the comment form available on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.*

Please specify the report number NUREG–0800, Section 12.5, draft Revision 3, in your comments, and send your comments by April 3, 2006.

FOR FURTHER INFORMATION, CONTACT: Roger L. Pedersen, Mail Stop O–6F12, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–3162; Internet: *rlp1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Standard Review Plan (SRP) is prepared for the guidance of staff reviewers in the Office of Nuclear Reactor Regulation in performing safety reviews of applications to construct or operate

nuclear power plants and the review of applications to approve standard designs and sites for nuclear power plants. The principal purpose of the SRP is to assure the quality and uniformity of staff safety reviews. It is also the intent of this plan to make information about regulatory matters widely available and to improve communication between the NRC, interested members of the public, and the nuclear power industry, thereby increasing understanding of the review process.

SRP Section 12.5 provides staff guidance for the review of operational aspects of the radiation protection program. The proposed revision updates the July 1981 version (Revision 2) of the SRP section, and includes most of the changes introduced in the draft revision, dated April 1996. The changes consist mostly of revising the references to 10 CFR part 20; assigning different responsibilities to the primary and secondary branches because of office reorganizations; editorial and formatting changes as part of the SRP update effort; and updating several references. The revision also adds standard paragraphs to extend application of the updated SRP section to the design certification reviews as well as to extend implementation of this section to submittals by applicants pursuant to 10 CFR part 50 or 10 CFR part 52.

The Section 12.5 *Acceptance Criteria* has been revised to reflect several changes made to 10 CFR Part 20 since the 1981 version of the SRP. Most significant of these was the 1991 major revision (56 FR 23391, May 21, 1991, as revised at 60 FR 20185, April 25, 1995), which changed the basis of the radiation dose limits (e.g., Effective Dose), added several new limits (i.e., dose limits for embryo/fetus, Planned Special Exposures, a lower dose limit for members of the public, etc.) and completely renumbered the paragraphs. Also, new requirements in 10 CFR 20.1406, ''Minimization of Contamination'' (63 FR 39088, July 21, 1997), and 10 CFR 20 Subpart H, ''Respiratory Protection'' (64 FR 54556, October 7, 1999, as revised at 67 FR 77652, December 19, 2002) have been added. In addition, two new sections were added to the Acceptance Criteria. These are: ''D. *Program Implementation,*'' which addresses the phased-in program implementation by a Combined Operating License applicant; and ''E. *Technical Rationale,*'' which gives the technical basis for each of the acceptance criteria.

Section VI, *REFERENCES* has been updated by removing outdated or withdrawn Regulatory Guides, NUREGs, and industry standards; revising references to the current titles of several guides and standards; adding references to new industry standards that supercede withdrawn standards; and adding the Regulatory Guides issued in support of the 1991 revision to 10 CFR 20.

Dated at Rockville, MD, this 22nd day of December, 2005.

For the Nuclear Regulatory Commission.

Stephen P. Klementowicz,

Acting Chief, Health Physics Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E6–1202 Filed 1–30–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53171; File No. SR–CBOE–2005–117)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Dividend and Merger Spread Fee Cap Program

January 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule relating to its dividend and merger spread transaction fee cap program.

The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.com*, at the Office of the Secretary at CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with ''dividend spread'' transactions at $2,000 for all dividend spread transactions executed on the same trading day in the same options class.[5] A similar fee cap is currently in place for market-maker, firm, and broker-dealer transaction fees associated with ''merger spread'' transactions.[6] These fee caps are in effect as a pilot program (''Strategy Fee Cap'') that is due to expire on March 1, 2006.[7]

The Exchange proposes to amend its Strategy Fee Cap program in the following respects: (i) To reduce the $2,000 per day per class fee cap to $1,000 per day per class; (ii) to add ''short stock interest'' spreads; (iii) to add a monthly fee cap of $50,000 per initiating firm; (iv) to provide that the Exchange may pass on the full amount of any royalty or license fees to trade participants on dividend, merger and short stock interest spreads; (v) to rebate floor brokerage fees associated with dividend, merger and short stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A ''dividend spread'' is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

[6] A ''merger spread'' transaction is defined as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

[7] *See* Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005); 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005); and 52374 (September 1, 2005), 70 FR 53402 (September 8, 2005).

interest spread transactions; and (vi) to reduce the time period in which dividend, merger and short stock interest spread rebate request forms must be submitted to the Exchange. The proposed modifications to the Strategy Fee Cap program are intended to make the Exchange's program more competitive with the strategy fee cap programs adopted by other exchanges.[8]

First, the Exchange proposes to reduce the $2,000 per day per class fee cap to $1,000 per day per class. Thus, market-maker, firm, and broker-dealer transaction fees will be capped at $1,000 for all dividend and merger spread transactions executed on the same trading day in the same options class. The Exchange is reducing its per day, per class fee cap to match the fee cap of another exchange.[9]

Second, the Exchange proposes to include short stock interest spreads in the Strategy Fee Cap program. Market-maker, firm, and broker-dealer transaction fees will be capped at $1,000 for all short stock interest spread transactions executed on the same trading day in the same options class. A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position.[10] The fee cap on short stock interest spreads will be subject to the same pilot program applicable to dividend and merger spreads expiring on March 1, 2006.

Third, the Exchange proposes to further cap transaction fees associated with dividend, merger and short stock interest spreads at $50,000 per month, initiating firm. The proposed $50,000 per month fee cap is also intended to match the fee cap of another exchange.[11]

Fourth, the Exchange proposes to pass on the full amount of any royalty or license fees to trade participants on dividend, merger and short stock interest spreads. Certain classes of options listed on the Exchange have as their underlying issue licensed products that carry a royalty fee, or license fee, on every contract traded. These fees are assessed by the issuing agency, and are not Exchange transaction fees. License fees that are charged to the Exchange are passed on to the actual participants executing the trade. Even though some of the fees are passed on, the Strategy Fee Cap would prevent the Exchange from recovering these fees in their entirety if they were to be included as transaction fees. If license fees were to be included as transaction fees, the Exchange would face the possibility of having to pay out substantial fees while the Strategy Fee Cap would limit the amount the Exchange would be able to pass on to trade participants. Because of the negative financial implications to the Exchange, the Exchange will not include license or royalty fees associated with dividend, merger and short stock interest spreads in the calculation of the $1,000 per day per class fee cap and the $50,000 per month fee cap. Other exchanges have proposed similar changes to their strategy fee caps.[12]

Fifth, the Exchange proposes to rebate floor brokerage fees associated with dividend, merger, and short stock interest spread transactions. The Exchange believes rebating floor brokerage fees for these spread transactions is necessary in order for the Exchange to be competitive in attracting these strategies, in that other exchanges do not assess variable floor brokerage fees or significantly discount floor brokerage fees.

Lastly, under the current Strategy Fee Cap program, a rebate request form, along with supporting documentation (*e.g.*, clearing firm transaction data), must be submitted to the Exchange within 30 days of the transactions in order to qualify transactions for the cap. The Exchange proposes to reduce the time period in which dividend, merger, and short stock interest spread rebate request forms must be submitted to the Exchange from within 30 days of the transactions to within 3 business days of the transactions. The Exchange believes the reduced submission time period will assist the Exchange in more efficiently processing the rebate requests. The Exchange believes that while the submission timeframe has been reduced, market participants eligible for the program should be able to meet the proposed deadline. The submission of a rebate request form shall also be required for the floor brokerage fee rebate. Such rebate request form must also be submitted to the Exchange within 3 business days of the transactions.

The Exchange intends to implement the proposed changes to the Strategy Fee Cap effective January 3, 2006.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and subparagraph (f)(2) of Rule 19b–4 thereunder[16] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–117 on the subject line.

[8] *See, e.g.*, Securities Exchange Act Release Nos. 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005); and 52297 (August 18, 2005), 70 FR 49687 (August 24, 2005).

[9] *See* PCX Options Fee Schedule.

[10] *See* Securities Exchange Act Release No. 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005).

[11] *Id.*

[12] *See, e.g.*, Securities Exchange Act Release Nos. 52935 (December 9, 2005), 70 FR 75525 (December 20, 2005); and 53115 (January 13, 2006), 71 FR 3600 (January 23, 2006).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–117 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1162 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53175; File No. SR–CBOE–2005–101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Membership Rules

January 25, 2006.

I. Introduction

On November 29, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to modify CBOE Rule 3.9, relating to investigation of membership applicants.

The proposed rule change was published in the **Federal Register** on December 22, 2005.[3] The Commission received no comments on the proposed rule change. On January 23, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as amended by Amendment No 1.

II. Description

The Exchange is proposing to amend CBOE Rule 3.9 (''Application Procedures and Approval or Disapproval'') subsection (f), which currently requires CBOE's Membership Department to investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b), and each applicant applying to be an individual member (collectively ''Membership Applicants''). As part of the current application process, Membership Applicants are required to submit fingerprints to the Exchange,[5] which CBOE then forwards to the Federal Bureau of Investigation.

The Exchange currently requires Membership Applicants to submit new fingerprints to the Exchange for processing, as part of the investigation process pursuant to CBOE Rule 3.9(f), even if the Membership Applicant was recently fingerprinted at the Exchange or another SRO. The proposed rule change would change this requirement to permit the Exchange to accept the results of a fingerprint-based criminal records check of the Membership Applicant conducted by the Exchange or another SRO within the prior year pursuant to that investigation process.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52952 (December 14, 2005), 70 FR 76087.

[4] In Amendment No. 1, the Exchange proposed an additional modification to CBOE Rule 3.9(f). Specifically, the Exchange proposed a change so that, as amended, the proposed rule would permit the Exchange to rely on the results of a fingerprint-based criminal records check of an applicant conducted by the Exchange itself, in addition to a check conducted by another self-regulatory organization (''SRO''), within the prior year. Amendment No. 1 is a technical amendment and therefore not subject to notice and comment.

[5] *See* CBOE Rule 3.7(c).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

In approving this proposed rule change, the Commission notes that as part of the application process, in addition to a fingerprint-based criminal records check, CBOE requires that a Membership Applicant also submit a Form U–4 (Uniform Application for Securities Industry Registration or Transfer). Form U–4 requires disclosure of events that would constitute a statutory disqualification under the Act. Because the Exchange obtains this information as part of the application process, and because CBOE Rule 3.9(d) requires Membership Applicants to promptly update membership application materials if the information provided in the materials becomes inaccurate or incomplete after the date of submission, the Commission believes that it is reasonable for the Exchange to expect that its Membership Department would have access to information that would reveal whether a Membership Applicant became subject to a statutory disqualification subsequent to the date of the results of a fingerprint-based criminal records check conducted either by the Exchange or by another SRO on which CBOE would be relying.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2005–101) is approved, as amended.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1163 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53172; File No. SR–CBOE–2006–07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Dividend, Merger, and Short Stock Interest Spread Fee Cap Program

January 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19B–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to amend the definitions of dividend, merger and short stock interest spreads for purposes of the Exchange's strategy fee cap program.

The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.com,* at the Office of the Secretary at CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend spread, merger spread and short stock interest spread transactions (''Strategy Fee Cap''). The definition of each strategy is set forth on the CBOE Fees Schedule.[5] The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2006.

The Exchange proposes to amend the definitions of dividend, merger and short stock interest spreads for purposes of the Strategy Fee Cap program, in order to add clarity and to make the definitions more consistent with each other.

First, the Exchange proposes to amend the definitions of dividend, merger, and short stock interest spreads in order to clarify that transactions done to achieve a dividend, merger or short stock interest arbitrage do not necessarily need to be ''spreads'' in order to qualify for the Strategy Fee Cap. According to the market participants (generally professionals) that engage in these strategies, each of these strategies can be achieved either by purchasing and selling the same option series or different options series. Accordingly, as explained in further detail below, the Exchange proposes to revise each definition to refer to each strategy as a ''strategy'' instead of as a ''spread'' and to change each definition in certain respects to make clear that transactions done to achieve a dividend, merger, or short stock interest arbitrage that involve only one options series may also qualify for the Strategy Fee Cap.

Second, the Exchange is also proposing changes to the definition of each strategy to better reflect the similarities between the strategies. Dividend, merger, and short stock interest strategies are strategies that have similar economic risks and are executed in similar ways. As explained in more detail below, each proposed definition will be clarified to reflect that each strategy involves the ''purchase, sale and exercise'' of options. Each proposed definition will also be clarified to reflect that the options involved must be of the ''same class''.

The Exchange defines a dividend spread for purposes of the Strategy Fee Cap as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. The Exchange proposes to change ''dividend spread'' to ''dividend strategy'', and proposes to define a dividend strategy as ''transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.'' The word ''two'' is not included in the new definition so that transactions involving only a single options series that are done to achieve a dividend arbitrage may also qualify for the Strategy Fee Cap. The word ''deep'' is also not included in the new definition because the options used do not necessarily need to be deep-in-the-money options and also because of the difficulty in defining what constitutes ''deep'' in-the-money. The definition is clarified by making explicit two requirements: the options must be of the same class and the transactions must be effected prior to the date on which the underlying stock goes ex-dividend.

The Exchange defines a merger spread for purposes of the Strategy Fee Cap as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. The Exchange proposes to change ''merger spread'' to ''merger strategy'', and proposes to define a merger strategy as ''transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.'' The proposed definition does not include the words ''but with different strike prices'' so that transactions involving only a single options series that are done to achieve

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* CBOE Fees Schedule, fn. 13.

a merger arbitrage may also qualify for the Strategy Fee Cap. The word ''simultaneous'' is also not included in the new definition because the purchase and sale transactions do not necessarily need to be executed simultaneously.

The Exchange defines a short stock interest spread for purposes of the Strategy Fee Cap as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. The Exchange proposes to change ''short stock interest spread'' to ''short stock interest strategy'', and proposes to define a short stock interest strategy as ''transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.'' The words ''spread'' and ''two'' are not included in the new definition so that transactions involving only a single options series that are done to achieve a short stock interest arbitrage may also qualify for the Strategy Fee Cap. The word ''deep'' is not included in the new definition for the same reasons it was removed from the definition of dividend strategy. Also, ''put'' is not included in the new definition because a short stock interest strategy can be accomplished using either calls or puts.

The Exchange proposes one additional minor clarifying change to footnote 13 of the Fees Schedule. The Exchange proposes to clarify that the $50,000 per month fee cap is ''per initiating member'' as well as per initiating firm, because the cap also applies to individual members effecting these strategies.

The Exchange believes that accommodating these transactions by keeping fees low will attract additional liquidity to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b-4 thereunder[9] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2006–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–07 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1165 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53167; File No. SR–CBOE–2005–89]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Adoption of a Hybrid Agency Liaison System for Automated Handling of Inbound Orders That Are Not Automatically Executed

January 23, 2006.

On October 27, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Hybrid Agency Liaison (''HAL'') system for automated handling of inbound orders for option classes trading on CBOE's Hybrid System (''Hybrid''). On December 7, 2005, the Exchange filed Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on December 15, 2005.[4] No comments were received regarding the proposal, as amended. This order approves the proposed rule change, as amended.

I. Description of the Proposal

Hybrid currently provides electronic executions on the Exchange for orders that are marketable against the Exchange's quote when it represents the National Best Bid or Offer (''NBBO''). The entire process for those orders is automated; however, many electronically-received orders that are not automatically executed upon receipt by the Hybrid System (usually because CBOE's disseminated quote is not the NBBO) are routed to a PAR terminal for manual handling.[5] In proposed CBOE Rule 6.14, the Exchange proposes to automate the handling process for certain orders in designated classes that would be routed to a PAR terminal under the current rules—specifically, market orders and limit orders that are marketable against CBOE's disseminated quote while that quote is not the NBBO, and limit orders that improve CBOE's disseminated quote (whether or not they are marketable against the NBBO). These orders would be electronically exposed to all CBOE Market-Makers appointed to the relevant option class as well as to all members acting as agent for orders at the top of the Exchange's book in the relevant option series (''Qualifying Members'').[6] Like open outcry, this exposure and subsequent allocation period[7] (together, the ''HAL auction'' or ''auction'') would afford crowd members an opportunity to match the away NBBO price.[8]

If any portion of an exposed order remains unexecuted at the end of a HAL auction, then the remaining order would be booked if it is a limit order that is not marketable, or, if marketable, routed to the Exchange showing the NBBO via the options intermarket linkage. If the price of the Linkage Order is no longer available on any market, then HAL would execute the remainder of the order against the Exchange's existing quote provided such execution would not result in a trade-through. However, if the Exchange's quote is inferior to the Exchange's best bid or offer at the time the order was received by HAL (''Exchange Initial BBO''), then the order would be executed against the Market-Makers that constituted the Exchange Initial BBO at a price equal to the Exchange Initial BBO.

In addition, the proposal provides for early termination of an auction in certain cases-for instance, when the Hybrid System receives an unrelated order on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price; when the Hybrid System receives an unrelated order on the same side of the market as the exposed order that is priced equal to or better than the exposed order; or, in the case of exposure of an order that is marketable against the Exchange Initial BBO, when a Market-Maker whose quote is part of the Exchange Initial BBO attempts to move its quote to an inferior price.[9] In this last case, the auction would terminate and the Exchange would not permit any Market-Maker quotes to move to an inferior price until the exposed order was routed through the Linkage or, if a superior price is no longer available on another exchange, executed at the Exchange Initial BBO against the Market-Makers that constituted the Exchange Initial BBO.[10]

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[12]

The Exchange noted in its proposal that the proposed Hybrid Agency Liaison system would be an improvement over open outcry auctions because HAL, an automated process, would reduce the duration of the auction to three seconds or less.[13] In addition, customer order protections built into proposed CBOE Rule 6.14 (such as, most significantly, the guarantee that the customer order will receive an execution at the Exchange Initial BBO if no better price is available when the auction ends or is terminated)[14] should guarantee that any order that is the subject of a HAL auction will be executed at a price at least as good as the price disseminated by the Exchange at the time the order was received by HAL.[15] Thus, the HAL auction provisions should ensure both that orders that are ineligible for automatic execution under the CBOE's rules because the CBOE is not at the NBBO are handled electronically rather than manually, and that CBOE Market-Makers honor their disseminated quotes, regardless of whether an auction has been initiated.

In addition, the Commission notes that the Exchange proposes to incorporate into its proposed rule provisions that would provide that a pattern or practice of submitting unrelated orders that cause an exposure period to conclude early and the dissemination of information regarding exposed orders to third parties will be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 and other Exchange rules.[16] The Commission believes that these provisions will require the CBOE to surveil for, and hopefully help to limit, any potential ''gaming'' of the HAL system.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 52928 (December 8, 2005), 70 FR 74388 (''Notice'').

[5] *See* CBOE Rule 7.12, PAR Officials (setting forth the rules for manual handling by the PAR Officials of orders routed to PAR terminals).

[6] Of course, eligible recipients of these messages (CBOE Market-Makers and Qualifying Members) may need to undertake some programming modifications to receive and respond to these messages. The Exchange will not require those programming changes.

[7] The allocation period affords Market-Makers and Qualifying Members that were interested in trading with an exposed order an opportunity to participate in the execution of an order following an exposure period. Each Market-Maker or Qualifying Member that submits an order or quote to trade with an order during the exposure or allocation periods would be entitled to receive an allocation of the order in accordance with the allocation algorithm in effect for the options class pursuant to CBOE Rule 6.45A or 6.45B. *See* proposed CBOE Rule 6.14(c).

[8] For a full description of the operation of the proposed HAL auction, *see* Notice, *supra* note 4.

[9] For a full discussion of the auction termination provisions in proposed CBOE Rule 6.14(d) and (e), *see* Notice, *supra* note 4.

[10] *See* proposed CBOE Rule 6.14(d)(iii) and (e)(iii).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] CBOE's proposed Rule 6.14(b) limits the total exposure and allocation time to three seconds.

[14] *See* proposed CBOE Rule 6.14(b)(i), (b)(ii), (d)(iii), and (e)(iii).

[15] *See* proposed CBOE Rule 6.14(b)(i) and (ii).

[16] *See* proposed CBOE Rule 6.14, Interpretations and Policies .01 and .02.

[17] 15 U.S.C. 78s(b)(2).

CBOE–2005–89), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1166 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53173; File No. SR–ISE–2006–03]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes for Transactions in Options on Three Narrow-Based Indexes

January 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to establish fees for transactions in options on three narrow-based indexes: the ISE–B&S Water Index (''HHO''), the ISE–CCM Alternative Energy Index (''POW'') and the ISE–CCM Nanotechnology Index (''TNY''). The text of the proposed rule change is available at the Exchange, at the Exchange's Web site *http://www.iseoptions.com/legal/proposed_rule_changes.asp*) and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on HHO, POW and TNY.[5] These fees will be charged only to Exchange members. The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03, respectively, for all Public Customer and Firm Proprietary orders. The amount of the execution fee and comparison fee for all Market Maker orders shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker transactions in equity options.[6] The Exchange believes the proposed rule change will further its goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into separate development agreements with Cronus Capital Markets and Boenning & Scattergood, Inc., in connection with the development, listing and trading of options on POW and TNY and HHO, respectively. As with certain other licensed options, the Exchange is adopting a fee of $0.05 per contract for trading in these options to defray the licensing costs. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders [7] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders [8] under a pilot program that is set to expire on July 31, 2006.[9] Further, since options on HHO, POW and TNY are not multiply-listed, the Payment for Order Flow fee shall not apply.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) [10] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[11] and paragraph (f)(2) of Rule 19b–4 thereunder [12] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange states that the HHO, POW and TNY meet the standards of ISE Rule 2002(b), which allows the Exchange to begin trading these products by filing Form 19b–4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b–4(e) of the Act, 17 CFR 240.19b–4(e).

[6] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[7] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[8] *See* Exchange Rule 1900.

[9] *See* Securities Exchange Act Release No. 52168 (July 29, 2005), 70 FR 45454–01 (August 5, 2005), SR–ISE–2005–32 (extending the expiration date for this pilot program from July 31, 2005 to July 31, 2006).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2006–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2006–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–03 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1176 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53149; File No. SR–NASD–2006–003]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Guidance Regarding Firms' Obligations Under NASD Rule 2111 Regarding Market Order Protection

January 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission *Notice to Members* (''*NTM*'') *06–03*, which provides guidance regarding the application of new NASD Rule 2111 prohibiting members from trading ahead of customer market orders under certain circumstances.

No changes to the text of NASD rules are required by this proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 9, 2005, the Commission approved new NASD Rule 2111, Trading Ahead of Customer Market Orders, which, among other things, prohibits a firm that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order.[5] On October 10, 2005, NASD issued *NTM 05–69* informing firms of Commission approval of new Rule 2111 and the January 9, 2006 effective date of the new rule.[6] *NTM 05–69* also informed firms that NASD would be publishing a separate *NTM* providing guidance regarding the application of Rule 2111. In *NTM 06–03*, NASD staff is, among other things, publishing questions and answers regarding the application of the new rule to assist members in their implementation.

NASD is filing the proposed rule change for immediate effectiveness as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. The compliance date of the proposed rule change will be January 9, 2006, which will coincide with the compliance date for Rule 2111.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (SR–NASD–2004–045).

[6] *See* NASD *NTM 05–69* (October 2005).

believes that the proposed rule change will clarify the application of market orders under Rule 2111 and enhance the integrity of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1) thereunder,[8] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. The compliance date of the proposed rule change will be January 9, 2006, which will coincide with the compliance date for Rule 2111.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2006–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2006–003 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1175 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53174; File No. SR–NSX–2006–01]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule Contained in Exchange Rule 11.10(A) To Decrease the Monthly Transaction Fee Cap

January 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2006, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NSX filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule reflected in Exchange Rule 11.10(A) to reduce its monthly transaction fee cap in Exchange Rule 11.10(A)(i) from $200,000 to $50,000. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

CHAPTER XI

Trading Rules

* * * * *

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(h) No change.

(i) Transaction Fee Cap. The monthly transaction fee charged to each member shall be equal to the lesser of (1) the amount assessed pursuant to Paragraph (A)(a) through (A)(h) of this Rule 11.10 or (2) [$200,000] *$50,000.*

(j)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NSX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fee schedule reflected in Exchange Rule 11.10(A) currently provides for fees payable by members based upon, among other things, transactions executed on the Exchange. The Exchange's current fee schedule provides for a monthly transaction fee cap of the lesser of the fees contained in Exchange Rule 11.10(A)(a) to 11.10(A)(h) or $200,000. With this filing, the Exchange proposes to reduce the dollar cap parameter from $200,000 to $50,000. This proposal will allow the Exchange to cap the transaction fee (which consists of trading fees in respect of agency, odd lot, professional agency, proprietary and preferencing transactions, as well as the fees associated with crosses and meets and the agency order mix fee) at $50,000 per month for competitive reasons in an attempt to preserve order flow. Please note that this transaction fee is calculated shortly after the month end activity (*i.e.*, the transaction fee for January would be calculated in February) and would be collected thereafter (in February), after the effective date of this filing. Accordingly, the Exchange will utilize this new rule in the calculation of the January fee (which would represent a reduction of the transaction fees for all NSX members).

The NSX believes the reduction of the fee cap will in no way impede the Exchange's current regulatory program or its ability to enforce compliance by its members with the Exchange's Rules or the Act.

2. Statutory Basis

The NSX believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor recieved written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NSX–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–NSX–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSX–2006–01 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1177 Filed 1–30–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10348 and # 10349]

Rhode Island Disaster # RI–00001

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Rhode Island dated 01/24/2006.

Incident: Flooding.

Incident Period: 10/07/2005 through 10/15/2005.

Effective Date: 01/24/2006.

Physical Loan Application Deadline Date: 03/27/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 10/26/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be

filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Kent, Providence.
Contiguous Counties:
Rhode Island: Bristol, Washington.
Connecticut: New London, Windham.
Massachusetts: Bristol, Norfolk, Worcester.
The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10348 6 and for economic injury is 10349 0.

The States which received an EIDL Declaration # are: Rhode Island, Connecticut, Massachusetts.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 24, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–1180 Filed 1–30–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV North Florida District Advisory Council; Public Meeting

The U.S. Small Business Administration North Florida District Advisory Council located in Jacksonville, Florida, will host a pubic meeting at 12 p.m. EST on March 2, 2006 at the SBA North Florida District Office located at 7825 Baymeadows Way, Suite 100B, Jacksonville, FL 32256 to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than February 27, 2006, in order to be placed on the agenda. Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100B, Jacksonville, FL 32256. Telephone (904) 443–1900 or FAX (904) 443–1980.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–1182 Filed 1–30–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Bradford Regional Airport, Lewis Run, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the Bradford Regional Airport Authority's request to change a portion (23.48 Acres) of airport property from aeronautical use to non-aeronautical use.

The parcel is located between the airfield and the existing airport Access Road approximately 1150 feet north of the intersection with PA Route 59. The property is currently aeronautical use used to protect the FAR Part 77 Transition Surface airspace. The tract currently consists of vacant and semi-forested land located roughly abeam and southeast of the Runway 05 threshold, and southwest of the existing terminal complex. The requested release is for the purpose of permitting the Airport Owner to sell and convey title of 23.48 Acres for use as a Pennsylvania National Guard Stryker Brigade Combat Readiness Center.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Managers office and the FAA Harrisburg Airport District Office.

DATES: Comments must be received on or before March 2, 2006.

ADDRESSES: Documents are available for review at the Airport Manager's office: Mr. Tom Frungillo, Manager, Bradford Regional Airport, 212 Airport Road, Suite E, Lewis Run, PA 16738. (814) 368–5928 and at the FAA Harrisburg Airports District Office: Mr. James M. Fels, Sr. Planner, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011. (717) 730–2830.

FOR FURTHER INFORMATION CONTACT: James M. Fels, Sr. Planner, Harrisburg Airports District Office location listed above.

SUPPLEMENTARY INFORMATION:

The parcel is located between the airfield and the existing airport Access Road approximately 1150 feet north of the intersection with PA Route 59.

Proposed Meets & Bounds Description

National Guard Parcel at Bradford Regional Airport

Beginning at a concrete monument, said monument also being the northwest corner of a parcel of ground belonging to now or formerly Cole;

Thence by the land of Cole, N 89°02′45″ E, 26.92 feet to a set 5⁄8″ rebar the true point of beginning for this parcel;

Thence through land that this was once a part of the following four courses and distances; N 44°26′45″ E, 1695.02 feet to a set 5⁄8″ rebar;

Thence S 45°38′17″ E, 521.84 feet to a set 5⁄8″ rebar, said point being on the westerly edge of a 50 foot right-of-way, said right-of-way leading up to the airport terminal from LR 42006 (Rt. 59);

Thence by a curve to the left an arc distance of 866.80 feet to a set 5⁄8″ rebar, said curve having central angle of 82°56′36″ and a radius of 598.77 feet;

Thence continuing by said right-of-way, S 45°22′21″ E, 37.97 feet to a set 5⁄8″ rebar;

Thence by land of the Bradford Regional Airport and lands now or formerly Cole, S 89°02′45″ W, 1641.19 feet to the point and place of beginning, passing over a concrete monument at 48.85′. Said Parcel containing 23.48 acres more or less. Excepting and reserving a 15-foot utility easement along the westerly edge of the road right-of-way, being the easterly boundary of this parcel; for maintenance, repair and or replacement of utilities located within said right-of-way.

Said property also subject to an easement prohibiting construction on the area abutting the northeasterly property line and extending southwesterly, 500 feet distant from and parallel with the aforesaid runway center line to a point 300′ beyond the end of said runway.

The property is currently aeronautical use used to protect the FAR Part 77 Transition Surface airspace. The parcel was acquired without Federal participation. The requested release is for the purpose of permitting the Sponsor to sell and convey title of the subject 23.48 Acres for use as a Pennsylvania National Guard Stryker Brigade Combat Readiness Center. The proceeds from the sale of property are to be used for the capital and operating costs of the airport.

Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, January 10, 2006.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 06–862 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review for Harrisburg International Airport, Middletown, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Susquehanna Area Regional Airport Authority for the Harrisburg International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Harrisburg International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 12, 2006.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 13, 2006. The public comment period ends March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Telephone 717–730–2832. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Harrisburg International Airport are in compliance with applicable requirements of part 150, effective January 13, 2006. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 12, 2006. This notice also announces the availability of this proposed noise compatibility program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, governmental agencies, and persons using the Airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The Susquehanna Area Regional Authority submitted to the FAA on December 16, 2005 noise exposure maps, descriptions and other documentation which were produced during the development of the Final Part 150 Noise Compatibility Study dated May 2005 and the Addendum 1 to that study dated December 2005. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Susquehanna Area Regional Airport Authority. The specific maps under consideration are the Existing (2004) Noise Exposure Map (NEM) for the existing conditions and the Future (2010) NEM with Noise Compatibility Program (NCP) Implementation. The FAA has determined that these maps for the Harrisburg International Airport are in compliance with applicable requirements. This determination is effective on January 13, 2006. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Harrisburg International Airport, also effective January 13, 2006. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal or noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 12, 2006.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and

preventing the introduction of additional non-compatible land use.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program for the Harrisburg International Airport are available for examination at the following locations:

Susquehanna Area Regional Airport Authority, Harrisburg International Airport, One Terminal Drive, Suite 300, Middletown, PA 17057.

Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Camp Hill, Pennsylvania, January 13, 2006.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 06–858 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Modification of the Phoenix Class B Airspace Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces three fact-finding informal airspace meetings to solicit information from airspace users and others, concerning a proposal to revise the Class B airspace at Phoenix, AZ. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Tuesday, April 25, 2006; Thursday, April 27, 2006; and Tuesday, May 2, 2006; beginning at 7 p.m. Comments must be received on or before June 3, 2006.

ADDRESSES: (1) The meeting on Tuesday, April 25, 2006, will be held at the Glendale Airport Terminal Building, 6801 North Glen Harbor Blvd., Glendale, AZ 85301; (2) The meeting on Thursday, April 27, 2006, will be held at the Williams Gateway Airport, ASU Polytechnic University, Student Union Ballroom, 7001 East Williams Field Road, Mesa, AZ 85212; (3) The meeting on Tuesday, May 2, 2006, will be held at the Deer Valley Airport Pan Am International Flight Academy, 530 West Deer Valley Road, Phoenix, AZ 85027.

Comments: Send comments on the proposal in triplicate to: Manager, Air Traffic Western Terminal Services Area, Federal Aviation Administration, P.O. Box 92007, Los Angeles, CA 90009–2007.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Western Terminal Services Area, FAA, Western-Pacific Regional Office, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Western-Pacific Region. A representative from the FAA will present a formal briefing on the planned modification to the Class B airspace at Phoenix, AZ. Each participant will be given an opportunity to deliver comments or make a presentation. Only comments concerning the plan to modify the Class B airspace area at Phoenix, AZ, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded.

Agenda for the Meetings

—Sign-in.
—Presentation of Meeting Procedures.
—FAA explanation of the proposed Class B modifications.
—Public Presentations and Discussions.
—Closing Comments.

Issued in Washington, DC, on January 25, 2006.

Kenneth McElroy,

Manager, Airspace and Rules.

[FR Doc. E6–1157 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held February 24, 2006, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. **Note:** Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on *www.rtca.org* Web site.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 25, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–899 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting, Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode Select (Mode S) Transponder

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, ATCRBS/Mode S Transponder.

SUMMARY: The FAA is issuing this notice to advise the public of a first meeting of RTCA Special Committee 209, ATCRBS/Mode S Transponder.

DATES: The meeting will be held on February 16, 2005, from 9 a.m.–5 p.m., and February 17, 2006, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. Special Committee 209 will address the design, performance, installation and operational issues associated with ATCRBS/Mode S Airborne Equipment. Special Committee 209 Chairmen are Thomas Pagano, Federal Aviation Administration and Robert Saffell Rockwell Collins, Inc. The agenda will include:

February 16–17:

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- RTCA Overview.
- Previous Mode S Transponder (Committee History).
- Current Committee Scope, Terms of Reference Overview.
  - ○ Presentation, Discussion, Recommendations.
- Organization of Work, Assignment of Tasks.
  - ○ Presentation, Discussion, Recommendations.
  - ○ Assignment of Responsibilities.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place for Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 17, 2006.

Natalie Ogletree,

RTCA Advisory Committee.

[FR Doc. 06–860 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Sixth (26th) Joint Meeting, RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held March 7–10, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at EUROCAE, 102 rue Etienne Dolet 92240 Malakoff—FRANCE.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http;//www.rtca.org;* (20) EUROCAE, Contact: Gilbert AMATO, Secretary General, Tel: +33 (0) 1 40 92 79 30, Fax: +33 (0) 1 46 55 62 65, E-mail: *gilbert.amato@eurocae.com.*

Security: Submit your name and company to *serge.bagieu@airbus.com* no later than February 3, 2006, to attend the meeting.

Info: Information on EUROCAE can be found at *http;://www.eurocae.org/.*

Hotels:

(1) Mercure Porte de Versailles Exp, 36–38 rue du Moulin, 92170 Vanves, Metro 12: Plateaude Vanves, Tel 33/1 46 48 55 55, Fax 33/1 46 48 56 56.

(2) Ibis Vanves Parc Despositions, 43 rue Jean Bleuzen 92170 Vanves, Metro 13: Platueu de Vanves, Tel: 33/1 40 95 80 00, Fax 33/1 40 35 96 99.

(3) Etap Porte Vanves, 110 rue Jean Bleuzen, 92170 Venves, Metro 12: Platueu de Vanves, tel: 33/892 68 07 23, Fax 33/1 50 95 33 54.

(4) Mercure Montparnassee, 20 rue de la Gaité, 75014 Paris, Metro 13: Gainté, Tel: 33/144 35 28 28, Fax 33/1 43 35 78 00.

(5) Ibis Maine Montparnassee, 160 rue du Chateau, 46014 Paris, Metro 13: Pernety Tel: 33/1 43 22 00 09, Fax: 33/1 43 20 21 78.

Dress: Business casual.

Directions: How to get to EUROCAE Premises at Malakoff EUROCAE Offices—102 rue Etienne Dolet 92240—MALAKOFF

From ''Roissy-Charles De Gaulle'' Airport (Travel Time: 60 to 75 Minutes)

- Take Airport shuttle to RER Station (located within the Airport).
- Take RER Line B to *Denfert Rochereau.*
- Take Metro Line 6 to *Montparnasse Bienvenue.*
- Take Metro Line 13 to *Malakoff-Rue Etienne Dolet.*
- Go on foot to 102, Rue Etienne Dolet (5-minute walk).

From ''Gare Du Nord'' Railway Station

- Take RER Line B to *Denfert Rochereau* and then as previously described (Metro lines 6 and 13).

From ''Orly Airport''

- Take ''Orlyval'' train to *Antony* and then as previously described (RER line B then Metro lines 6 and 13).
- Or alternatively Take Air France bus Direction *Invalides* and leave at *''Montparnasse''* and then as previously described (Metro line 13). Additional information on directions and maps may be found by accessing the RTCA Web site *http://www.rtca.org* or contacting the RTCA Secretariat.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting.

Meeting Objectives

- Resolve all comments on version 5.0 of PU–24, Oceanic Safety and Performance Requirements Standard.
- Complete and update all parts of PU–24: Complete section 9.2,

Operational considerations for ADS application and Annex A, and update section 1 and appendices A, B and C, as necessary.

• Post PU–24, version 6 for final SC–189/WG–53 review.

• Resolve all comments on version H, PU–40, FANS 1/A–ATN Interoperability Requirements Standard.

• Progress material for PU–40 related to accommodating ATN Aircraft in FANS 1/A airspace.

The plenary agenda will include:

Tuesday, March 7, 2006 (9 a.m. to 5 p.m.)

• Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review and approval of Agenda and Meeting Minutes) Administrative.

• SC–189/WG–53 co-chair progress report and review of work program.

• Determine and agree to breakout groups based on analysis of comments on PU–40 and PU24.

Mid-Morning Break (10:30 a.m.)

• Breakout groups, as agreed, and plenary debriefs, as necessary.

Wednesday and Thursday, March 8–9, 2006 (9 a.m. to 5 p.m.)

• Breakout groups, as agreed, and plenary debriefs, as necessary.

Friday, March 10, 2006 (9 a.m. to 1 p.m.)

• Debrief on progress for the week.

• Closing Plenary Session (Review schedule and new action items. Any other business, Adjourn).

Attendance is open to the interested public but limited to space availability. with the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 18, 2006.

Natalie Ogletree,

RTCA Advisory Committee.

[FR Doc. 06–861 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Availability of Border Enforcement Grant Program Funds

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: This document announces the availability of grant funding under the FY2006 Border Enforcement Grant (BEG) program as specified in Section 4110 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU). Section 4110 establishes a BEG program. The program is a discretionary grant program funded by a single source. It provides funding for carrying out border commercial motor vehicle (CMV) safety programs and related enforcement activities and projects. An entity or a State that shares a land border with another country is eligible to receive grant funding.

DATES: Applications for grant funding should be sent to the FMCSA Division Office in the State where the applicant is located no later than March 15, 2006. Specific information required with the application is provided below.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Federal Motor Carrier Safety Administration, Office of Safety Programs, North American Borders Division (MC–ESB), 518–431–4239, extension 262, Leo W. O'Brien Federal Building, Room 742, Clinton Avenue and North Pearl Street, Albany, New York 12207. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4110 of SAFETEA–LU (Pub. L. 109–59, August 10, 2005, 119 Stat. 1144) established the BEG program. FMCSA has been providing grant funding to States and others for border program activities since 1995. From FY1995 through FY2003, the majority of the funding was provided through FMCSA's Motor Carrier Safety Assistance Program (MCSAP). In FY2004, the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, January 23, 2004, 118 Stat. 3) authorized a Border Enforcement Grant Program for southern border States and a Northern Border Truck Inspection Program for northern border States. In FY2005, the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, December 8, 2004, 118 Stat. 2809) authorized a combined southern/northern Border Enforcement Program.

SAFETEA–LU authorizes the BEG program for FY2006 through FY2009. The authorized funding for the program is $32 million per year ($128 million total). Funding is subject to reductions as a result of obligation limitations and takedowns as specified in SAFETEA–LU or other legislation.

Funds are available to an entity or a State that shares a land border with a foreign country. Except for the Maintenance of Expenditure requirement that applies to States and political subdivisions of States, for the purposes of the FY2006 BEG program, FMCSA has determined that an entity includes any political subdivision of a State that shares a border with another country or any other organization that carries out border commercial vehicle safety programs and related enforcement activities or projects consistent with established Federal priorities and criteria.

The Federal share of the funds is established by SAFETEA–LU as 100 percent. Allocations remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year.

Additional information on the BEG program and its application process is available from the Catalog of Federal Domestic Assistance (CFDA), which is available on the Internet at *http://www.cfda.gov.* The BEG program is listed as CFDA number 20.233.

Implementation of the BEG Discretionary Program in FY2006

FMCSA is implementing the FY2006 BEG program with the goal of reducing the number and severity of CMV crashes in the United States by ensuring CMVs involved in the cross-border movement of freight and passengers are in compliance with all FMCSA regulatory requirements. To achieve this goal, FMCSA has established the following national priorities for the FY2006 BEG program:

• Increase the number of CMV safety inspections and commercial driver license/operating authority/financial responsibility checks in border States with the focus on international traffic;

• Increase the number of hazardous materials inspections in border States with the focus on international traffic;

• Improve the capability to conduct CMV safety inspections at remote sites near the border (The list of eligible items in 49 CFR 350.311 that relate to MCSAP should be used as a guide.);

• Develop appropriate telecommunications systems—those that relate directly to the accessing and

transfer of CMV safety data and information—and coordination procedures with Federal inspection agencies and others;

• Design innovative initiatives to improve the safety of CMVs, drivers, and carriers entering the United States from Canada or Mexico; and

• Ensure southern border States meet all requirements to allow Mexico-domiciled carriers access beyond the border commercial zones.

Application and Selection Process

The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State or the Federal Government ending before October 1, 2005, whichever the State designates.

The applicant must submit an application form (SF–424, SF–424A, and SF–424B) no later than March 15, 2006 to the Division Administrator of the FMCSA Division Office in the State in which the applicant is domiciled.

If funds remain available after allocations are made for applications submitted by March 15, 2006, additional applications may be submitted and will be considered for funding until all available funds have been allocated.

In addition to the application form, the application package must include a border enforcement program plan containing the following:

• Detailed budget,
• Scope of project,
• Purpose,
• Performance goals,
• Objectives,
• Implementation strategies,
• Performance measures,
• Monitoring and evaluation plan, and
• Status and evaluation of FY2005 border enforcement plan, if appropriate.

The border enforcement program plan must be coordinated with the State lead MCSAP agency, as appropriate.

SF–424, SF–424A, and SF–424B can be downloaded from *http://www.whitehouse.gov/omb/grants/grants_forms.html.* Addresses of the FMCSA Division Offices are available on the Internet at *http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.asp.*

As an alternative, applicants can apply for BEG funding using the grants.gov electronic application process. To use the process, the applicant must have a DUNS number and be registered with grants.gov. To obtain a DUNS number or register with grants.gov, go to *http://www.grants.gov/GetStartedRoles?type=aor.*

To apply for a grant using the grants.gov process, the applicant must download a grant application package, complete the selected grant application package, and submit the completed grant application package. This can be done on the Internet at *http://www.grants.gov/Apply?campaignid=tabnavtracking081105.* The CFDA number for BEG is 20.233.

It is anticipated the grants.gov application process will be available for use by the BEG program by March 1, 2006.

Upon receipt, the applications will be reviewed by FMCSA and prioritized for potential funding. The review will consider consistency with national priorities, as noted above; performance with respect to previous year border grant programs, if applicable; coordination with MCSAP, if applicable; Division Administrator recommendations; and other criteria that FMCSA deems appropriate.

Funds will be allocated based on availability and on the applications review conducted by FMCSA. Those applicants approved for funding will be required to enter into a grant agreement with FMCSA, which will be executed by a Division Administrator on behalf of FMCSA.

Issued on: January 20, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–1155 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23238]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 14 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before March 2, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–2005–23238 using any of the following methods:

• Web site: *http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.

• Fax: 1–202–493–2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical

Qualifications Division, (202) 366–4001, *maggi.gunnels@fmcsa.dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 14 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Nick D. Bacon

Mr. Bacon, 29, has had refractive amblyopia strabismus in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His ophthalmologist examined him in 2005 and noted, ''In my opinion, Mr. Bacon has sufficient vision including visual field, to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Bacon reported that he has driven straight trucks for 6 years, accumulating 120,000 miles. He holds a Class B CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Donald G. Bostic, Jr.

Mr. Bostic, 47, has had age related macular degeneration in his right eye for 23 years. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, Mr. Bostic has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bostic reported that he has driven straight trucks for 13 years, accumulating 780,000 miles, and tractor-trailer combinations for 2.5 years, accumulating 75,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Johnny W. Bradford

Mr. Bradford, 57, has a prosthetic right eye due to trauma he sustained in 1980. The best corrected visual acuity in his left eye is 20/20. His ophthalmologist examined him in 2005 and noted, ''In my opinion, Johnny is sufficient with his eye sight and glasses to drive a commercial vehicle.'' Mr. Bradford reported that he has driven tractor-trailer combinations for 3 years, accumulating 85,500 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Aaron C. Buck

Mr. Buck, 36, has a prosthetic left eye due to trauma he sustained in 1979. The visual acuity in his right eye is 20/20. Following an examination in 2005, his optometrist noted, ''I believe, Mr. Aaron Buck has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Buck reported that he has driven straight trucks for 8 years, accumulating 280,000 miles. He holds a Class 1 operator's license from Vermont, which qualifies him to drive all non-commercial motor vehicles except motorcycles and school buses. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

James C. Davis

Mr. Davis, 63, has had stable loss of vision in his left eye due to an unknown cause since 1981. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2005, his ophthalmologist noted, ''Given that Mr. Davis has a visual acuity of 20/20 with a normal full vision field in the right, it appears that Mr. Davis has significant vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Davis reported that he has driven straight trucks for 40 years, accumulating 600,000 miles, and tractor-trailer combinations for 27 years, accumulating 270,000 miles. He holds a Class C operator's license from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

James H. Eldridge Jr.

Mr. Eldridge, 63, has had chorodial revascularization in his right eye since 1997. The best corrected visual acuity in his right eye is count-finger-vision at 5 feet and in the left, 20/25. His optometrist examined him in 2005 and noted, ''Despite the central vision loss in the right eye, I feel he has adequate vision to operate a commercial vehicle.'' Mr. Eldridge reported that he has driven straight trucks for 45 years, accumulating 1.3 million miles and tractor-trailer combinations for 15 years, accumulating 375,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Michael G. Gould

Mr. Gould, 49, has had angle recession glaucoma in his right eye since 2000. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''Mr. Gould has a full 120 degree field in the left eye and a nearly full 110 depth field in the right eye. I believe that represents excellent vision for Mr. Gould and should cause no problem for him operating a commercial motor vehicle.'' Mr. Gould reported that he has driven straight trucks for 21 years, accumulating 525,000 miles. He holds a Class C chauffer license from Michigan. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Albert L. Gschwind

Mr. Gschwind, 55, has an idiopathic subfoveal subretinal neovascular membrane in his left eye since 1999. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2005, his ophthalmologist noted, ''I feel that based on his current visual function and examination, that he has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Gschwind reported that he has driven straight trucks for 34 years, accumulating 272,000 miles, and tractor-trailer combinations for 33 years, accumulating 1.4 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Bruce A. Homan

Mr. Homan, 50, has had central vision loss in his left eye since 1998. The best visual acuity in his right eye is 20/25 and in the left, 20/400. His optometrist examined him in 2005 and noted, ''It is my medical opinion that Mr. Homan can perform the driving tasks required to operate a commercial vehicle as he has been doing.'' Mr. Homan reported that he has driven tractor-trailer combinations for 20 years, accumulating 600,000 miles. He holds a Class A CDL

from Washington. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

Matthew J. Konecki

Mr. Konecki, 37, has had anisometropic amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/15–2 and in the left, 20/200. His ophthalmologist examined him in 2005 and noted, ''It is my opinion that Mr. Konecki has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Konecki reported that he has driven straight trucks for 7 years, accumulating 91,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Rick P. Moreno

Mr. Moreno, 42, has a macular hole in his right eye due to an injury he sustained in 1987. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''In my medical opinion, I feel Rick has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Moreno reported that he has driven straight trucks for 1 year, accumulating 24,000 miles and tractor-trailer combinations for 3 years, accumulating 2.8 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Roy J. Oltman

Mr. Oltman, 47, is blind in the left eye due to trauma he sustained at the age of 7. The best corrected visual acuity in his right eye is 20/20. His ophthalmologist examined him in 2005 and noted, ''From a visual standpoint, I see no limitations for Mr. Oltman. As I explained to him, I do not know all activities needed for operating a commercial vehicle, but for a person with only one eye, his visual function is excellent in the right eye.'' Mr. Oltman reported that he has driven straight trucks for 5 years, accumulating 10,000 miles and buses for 7 years, accumulating 10,500 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for a moving violation in a CMV.

Monte L. Purciful

Mr. Purciful, 53, has a cataract in his right eye due to a traumatic injury that occurred at age 11. The best corrected visual acuity in his right eye is hand motion and in the left, 20/20. His ophthalmologist examined him in 2005 and noted, ''In my professional opinion, Mr. Purciful has adequate vision to safely operate a commercial vehicle.'' Mr. Purciful reported that he has driven straight trucks for 36 years, accumulating 108,000 miles and tractor-trailer combinations for 2 years, accumulating 2,000 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Bernard J. Wood

Mr. Wood, 59, has a prosthetic right eye due to a traumatic injury at age 2. The best corrected visual acuity in his left eye is 20/15–1. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, Mr. Wood is capable and qualified to operate a commercial vehicle for interstate travel.'' Mr. Wood reported that he has driven straight trucks for 10 years, accumulating 400,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows one crash, for which he was not cited, for violating any traffic laws and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The agency will consider all comments received before the close of business March 2, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 23, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–1154 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–23511]

Joint Development Guidance

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of Guidance; request for comments.

SUMMARY: This guidance would implement additional authority provided in the Safe, Accountable, Flexible and Efficient Transportation Equity Act, a Legacy for Users (SAFETEA–LU) for public transportation agencies undertaking joint development projects. In addition, this notice seeks comment on two issues: a clarification of what is ''physically or functionally related'' to a transit project; and a proposed limitation on the amount of space that might be leased under ''incidental use.'' Finally, this guidance would provide additional information in a question-and-answer format to assist grantees in developing and submitting project proposals for FTA review.

DATES: Comments should be received on or before March 2, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Paul Marx, 202–366–1675, or Paula Schwach, 816–329–3935. FTA is located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95

or later), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 9). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the FTA Web site: *http://www.fta.dot.gov*. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

The Federal Transit laws have included joint development authority since the Urban Mass Transit Act of 1974. In the Transportation Equity Act for the 21st Century (TEA–21), the joint development authority was incorporated into the definition of a transit capital project, at 49 U.S.C. 5302(a)(1)(G). This made joint development activities eligible for reimbursement under formula and discretionary transit grant programs. SAFETEA–LU added intercity bus and rail terminals to the joint development authority, and excepted them from the prohibition on supporting the construction of space for commercial, revenue-producing activities.

The definition of ''capital project'' reads, in pertinent part, as follows:

(1) Capital project.—The term ''capital project'' means a project for * * *

(G) a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, because the improvement enhances the effectiveness of a mass transportation project and is related physically or functionally to that mass transportation project, or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation—

(i) Including, property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) Excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to mass transportation;'' [Emphasis on additions added.]

FTA has implemented the joint development authority as part of its grant program circulars, inserting guidance as Appendix A to Circular 5010.1, guidance for new Major Capital Investments, and as Appendix B to the Grants Management and Formula Capital Grants circulars, 9300.1 and 9030.1. The proposed revision incorporates the new authority provided in SAFETEA–LU, and it seeks to clarify how FTA will review and approve specific activities involving the use of federally-assisted real property. These include transfer of real property for joint development, incidental use and shared use of transit property, as well as property disposition. The following are changes made to the original Appendix, for each of Circulars 5010.1, 9030.1 and 9300.1. The revised Appendix, as a substitute for the existing Appendices, is accessible on the FTA Web site, at *http://www.fta.dot.gov/;* as well as in the DOT Docket, at FTA–2006–23511.

- Page 1—Reorganized the beginning of the Appendix to focus on the three tests defining a joint development: Statutory Definition; Financial Return; and Highest and Best Transit Use.
- Page 5—Eligible Costs—Added element f., ''including integrity bus and rail facilities.'' This item reflects the new authority in SAFETEA–LU.
- Page 10—Added a new Section 9: Process for Submitting a New Joint Development Proposal.
- Page 12—Revised Frequently Asked Questions, to include new examples on low and moderate-income housing (Question 11), Parking for Community Service Activities (Question 13), the difference between Joint Development Transfer and Disposition (Question 14), and the difference between Joint Development and Shared Use (Question 15).
- Page 25—Added Questions 18, 19, and 20 to clarify the treatment of property disposition, sharing common walls, and intercity bus and rail stations.
- Attachment 1—FTA has developed a Joint Development checklist defining what is to be included in a project proposal submitted for FTA review.

FTA seeks comment on these revisions to the joint development appendices to the respective FTA Circulars.

In addition, FTA seeks comment on two basic issues that arose during the development of this Appendix.

Physically or Functionally Related—A joint development project must be a mass transportation improvement that is physically or functionally related to the transit project. Based on the implementation of this authority over the last twenty years, FTA has taken this to mean that: either the joint development must be integrated into the transit project—i.e., share its common walls, floor, and/or roof—or that the joint development must be related to the transit project by function, as evidenced by connecting pathways, joint use of parking, bicycle and related amenities, and enhancement of the transit system by the joint development. FTA has tended to prefer projects where the joint development was fully integrated into the overall transit project, thus ensuring physical relationship.

However, the addition of intercity bus and train stations to the definition of a joint development project raises some questions regarding functional relationship. The joint development is intended to enhance the effectiveness of public transit, and this may occur optimally if the intercity bus or rail station is in a nearby but separate facility from the transit station. FTA seeks comment on whether a direct (short distance) pedestrian or bicycle pathway is sufficient to establish a functional relationship between two stand-alone structures that are defined as a transit capital project, or whether FTA should require that a joint transit/intercity terminal project share a common wall and roof in order to conform to the requirements of SAFETEA–LU.

Parking is a related issue in this regard. FTA generally will not support parking in excess of transit need. However, both intercity bus and rail terminals will have a need for parking (and taxi access) even if most of their customers come to the terminal on public transportation. FTA seeks comment on how to incorporate intercity bus and rail terminal parking requirements into the overall transit project.

Maintenance cost is also a related issue in this regard. Unlike other joint development projects, intercity bus and rail stations are not required to pay ''a reasonable share of the costs of the facility through rental payments and

other means; * * *'' FTA has interpreted this exception as applying to the construction cost of these facilities, not their ongoing reasonable costs of maintenance. FTA will encourage public transportation agencies to negotiate shared maintenance agreements to ensure satisfactory condition and usefulness of the joint development project over its full term.

Proportion of Incidental Use—FTA is considering establishing a percentage of additional space that may be supported with transit grant funds for joint development and/or incidental use purposes. Taking as given that the primary purpose of the expenditure is a transit project—say, a bus transfer facility—how much more space would be reasonable to include for a join development activity such as a day care center, congregate meal facility, or health care facility? Is it reasonable for the physical capacity of the jointly developed improvement to exceed the transit facility in size and/or cost? This question arises particularly in the context of an intercity bus or rail station which, since its service area is likely to be considerably larger than the transit agency's, may require even more ''peak'' than the transit agency does.

Related to this issue is the question of how to treat changes in the use of joint development space after the project is complete. For example, if space was made available for a day care center but three years after the project is complete, the day care center manager moves the operation to another location. FTA seeks comment on whether the transit agency should be required to replace the day care center only with another eligible transit activity (such as a senior care or public health activity), or whether the space might be made available for lease by a public or private sector activity. FTA is considering requiring the transit agency to perform a new market analysis on the basis of replacing the initial joint development activity with a market-based joint development activity.

Finally, the public transit agency may reasonably seek to build a large enough facility to allow for future expansion. Given that such facilities may have a useful life of 40 years or more, it is reasonable to anticipate some growth in the transit agency and its service over that term. The transit agency may then wish to offer this additional space for rent on a non-interfering basis until it is needed for transit operations. FTA seeks comment on a method for determining what growth is ''reasonable'' to project in this instance. FTA is considering linking this projected growth to population forecasts for the region, as used by the Metropolitan Planning Organization for its long range plans.

Issued on: January 24, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–871 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of random drug and alcohol testing rates.

SUMMARY: This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

DATES: *Effective Date:* January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Powers, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366–2896 (telephone) and (202) 366–7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at *http://www.fta.dot.gov*, click on ''Safety and Security.''

SUPPLEMENTARY INFORMATION: On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions and to begin submitting annual reports by March 15 of each year beginning in 1996. The annual report includes the number of employees who had a verified positive for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. The testing rules were updated on August 1, 2001, and established a random testing rate for prohibited drugs and the misuse of alcohol.

The rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the ''positive rate'' for the entire transit industry is less than one percent for two preceding consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year (''positive rate'' means the number of positive results for random drug tests conducted under 49 CFR 655.45 plus the number of refusals of random tests required by 49 CFR 655.49, divided by the total number of random drug tests, plus the number of refusals of random tests required by 49 CFR part 655).

The alcohol provisions provide that the random rate may be lowered to 10 percent if the ''violation rate'' for the entire transit industry is less than 0.5 percent for two consecutive years. It will remain at 25 percent if the ''violation rate'' is equal to or greater than 0.5 percent but less than one percent, and it will be raised to 50 percent if the ''violation rate'' is one percent or greater for any one year (''violation rate'' means the number of covered employees found during random tests given under 49 CFR 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by 49 CFR 655.49, divided by the total reported number of random alcohol tests plus the total number of refusals of random tests required by 49 CFR part 655).

49 CFR 655.45(b) states that, ''the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire industry. The information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by 49 CFR part 655. In determining the reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and make appropriate modifications in calculating the industry's verified positive results and violation rates.''

In 2005, the FTA required a random drug testing rate of 50 percent of the total number of their ''safety-sensitive'' employees for prohibited drugs based on the ''positive rate'' for random drug test data from 2002 and 2003. FTA has received and analyzed the latest available data (CY2004) from a representative sample of transit employers. Based on the data, the random drug rate was lower than 1.0 percent for the two preceding consecutive years (0.96 percent for 2003 and 0.89 percent for 2004). However,

based on additional information noted herein, the Administrator has determined that the random drug testing rate shall remain at 50 percent for 2006.

The Department has noted the proliferation of products to defraud the USDOT urine screens. Congressional hearings on these products and the GAO Report of 17 May 2005 are indicative of the potential adverse impact these products marketed as adulterate specimens may have on reported random rates and the reliability of those results.

The Secretary of Transportation's Office of Drug &Alcohol Policy & Compliance (ODAPC) has proposed to amend 49 CFR part 40 to require specimen validity tests for all urine specimens collected pursuant to part 40. The Department proposes that each DOT specimen be tested for products that can be used to adulterate and substitute a urine specimen (70 FR 209 October 31, 2005). The Department would require each HHS-certified laboratory to conduct specimen validity testing. This will have the effect of identifying more adulterated and substituted urine specimens and enhance the reliability of test results. The Department believes the safety concerns associated with random testing warrant a one year delay in order to analyze reported random rates after SVT testing has been implemented.

In 2005, the FTA retained the random alcohol testing rate of 10 percent (reduced previously from 25 percent) based on the ''positive rate'' for random alcohol test data from 2003 and 2004. Because the random alcohol violation rate was again lower than 0.5 percent for the two preceding consecutive years (0.20 percent for 2003 and 0.11 percent for 2004), the random alcohol testing rate will remain at 10 percent for 2006.

FTA detailed reports on the drug and alcohol testing data collected from transit employers may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW., Room 9301, Washington, DC 20590, (202) 366–2896 or at *http://transit-safety.volpe.dog.gov/Publications*.

Issued on: January 24, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–859 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23628]

Child Safety and Child Booster Seats Incentive Grants

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of grants for child safety and child booster seats.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a grant program under Section 2011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy of Users (SAFETEA–LU) to implement programs to purchase and distribute child restraints, support enforcement of child restraint laws, train child passenger safety professionals concerning all aspects of child restraint use, and educate the public concerning the proper use and installation of child restraints. This notice solicits applications from the fifty States, the District of Columbia, and Puerto Rico.

DATES: Applications must be received by the office designated below on or before July 1 of the applicable fiscal year.

ADDRESSES: Applications must be submitted to the appropriate National Highway Traffic Safety Administration Regional Administrator.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Hammond, Injury Control Operations and Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394. For legal issues: David Bonelli, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Incentive Grants for Child Safety Seats and Child Booster Seats

Section 2011 of SAFETEA–LU (Pub. L. 109–59) establishes an incentive grant program for child safety seats and child booster seats. To qualify for grant funds, States must ''enforc[e] a law requiring that any child riding in a passenger motor vehicle in the State who is too large to be secured in a child safety seat be secured in a child restraint that meets the requirements prescribed by the Secretary under section 3 of Anton's Law.'' Prior to Anton's Law, NHTSA's performance requirements for child safety seats covered children weighing only up to 50 pounds.[1] Anton's Law (Pub. L. 107–318) was enacted to improve the safety and use of child restraints for children between the ages of 4 and 8. To accomplish these purposes, Congress directed the Department of Transportation, in Section 3 of Anton's Law, to make Federal performance requirements applicable to child restraints recommended for children weighing more than 50 pounds. On June 3, 2003, pursuant to this mandate, NHTSA published a final rule setting performance requirements for child restraints recommended for children weighing up to 65 pounds.[2]

The Section 2011 grant program advances the purposes of Anton's Law by awarding funds to States that extend their child restraint laws to cover children who are too large to fit in child safety seats. Based on the final rule promulgated under Section 3 of Anton's Law, Section 2011 requires States to enforce child restraint laws whose coverage extends to children weighing up to 65 lbs.

Virtually all State child restraint laws use the age of the child as a means of specifying the children required to be secured in child restraints. However, not all State laws use the weight of the child in defining coverage. Moreover, enforcing a child restraint law based on the age of the child is likely to be more practicable for State and local enforcement officials. For these reasons, we are defining our grant criteria according to the age that correlates to a 65-pound child. According to the most recent U.S. Department of Health & Human Services (DHHS) publication on average body weight for children, the average weight of a 7-year-old child is 59.8 pounds and the average weight of an 8-year-old child is 72 pounds.[3] On the basis of this information, we have selected 7 years old as the age that is reasonably representative of a 65-pound child for the purposes of this grant program.

Minimum Requirements for a Grant

To qualify for a grant under this program, therefore, a State must enact

[1] These performance requirements were established using a 6-year-old child dummy. The weight of the dummy is 51.6 pounds. According to U.S. Department of Health & Human Services statistics, 51.7 pounds is the average weight of a 6-year-old child. Cynthia L. Ogden, Ph.D., *et al*, U.S. Department of Health and Human Services, Mean Body Weight, Height, and Body Mass Index, United States 1960–2002 (2004).

[2] The 2003 performance requirements were established using a 6-year-old child dummy modified through the addition of weight (10.4 pounds) to represent approximately the weight of an 8-year-old child.

[3] OGDEN, supra note 1, at 3.

and enforce a law requiring that any child riding in a passenger motor vehicle (*i.e.*, a passenger car, pickup truck, van, minivan or sport utility vehicle) who is under 8 years of age be secured in a child restraint. A child restraint includes a child safety seat, as defined in 23 U.S.C. 405(f), and a booster seat, as defined in 49 CFR 571.213. The State child restraint law must allow enforcement officials to stop or detain a passenger motor vehicle and issue a citation upon observation that a child under 8 years of age is not properly secured in a child restraint, without the need for probable cause to believe that another violation has been committed.

Reading Section 2011 in conjunction with the findings under Anton's Law (Section 2), it is clear that Congress intended States to have continuous coverage for all children subject to the safety restraint requirement. Therefore, to qualify for a grant under this program, a State child restraint law must not leave any gaps in coverage for children under 8 years of age (*e.g.*, gaps between coverage by a child safety seat and a booster seat). Such gaps would be incongruous with the purpose of the grant program. Finally, while all States define coverage under their child restraint laws according to the age of the child, several States include weight and/or height requirements. These laws typically permit children who have attained a certain weight or height to be exempted from child restraint requirements regardless of age. Consistent with the final rule published under Section 3 of Anton's Law, a State law covering children under 8 years of age, but excluding children who have attained a weight in excess of 65 pounds, will not be deemed ineligible under this grant program. In addition, consistent with long-standing NHTSA guidance on booster seat usage, a State law covering children under 8 years of age, but excluding children who have attained a height of 4 feet, 9 inches or taller will not be deemed ineligible under this grant program.

Exemptions

While NHTSA does not require or encourage the adoption of exemptions, the agency notes that many existing child restraint laws contain a number of exemptions. The agency believes that the Section 2011 program's goal of increasing the use of child restraints would not be served by denying a grant to States whose laws contain exemptions, without regard to the nature of those exemptions. On the other hand, some exemptions would so severely undermine the safety considerations underlying the grant program as to render a State whose law contains such exemptions ineligible for a grant. The agency will review each State's child restraint law to determine the acceptability of any exemptions. In keeping with NHTSA's practice in 1998 to implement the Section 405 grant program under the Transportation Equity Act for the 21st Century (TEA–21), the agency has reviewed existing child restraint laws and has determined that the following exemptions are not incompatible with the requirements of SAFETEA–LU:

- Children with medical conditions who are unable to use a child restraint, provided there is written documentation from a physician;
- Children riding in a passenger motor vehicle that is not required to be equipped with safety belts.

The agency has accepted these exemptions by long-standing application in safety belt grant programs. A State that enacts a law with any exemption other than these should anticipate that the agency will review the exemption to determine whether its impact on traffic safety is minimal and it is, therefore, acceptable.

Eligibility

Each of the fifty United States, the District of Columbia and Puerto Rico (''States'') may submit an application under this program.

Application Procedures

First Year Requirements

To apply for grant funds, a State must submit the certifications required by Appendix 1, signed by the Governor's Representative for Highway Safety, to the appropriate NHTSA Regional Administrator no later than July 1 of the fiscal year.

Subsequent Year Requirements

To demonstrate compliance with this criterion in subsequent years a State receives grant funds:

(a) If the State's law has not changed, the State must submit the certifications required by Appendix 2, signed by the Governor's Representative for Highway Safety, to the appropriate NHTSA Regional Administrator no later than July 1 of the fiscal year.

(b) If the State's law has changed, the State must submit the certifications required by Appendix 1, signed by the Governor's Representative for Highway Safety, to the appropriate NHTSA Regional Administrator no later than July 1 of the fiscal year.

A State seeking to determine whether an existing or proposed child restraint law qualifies under the grant program may submit its law prior to July 1 for preliminary review by the agency.

Award Procedures

Each fiscal year (FY), a grant will be made to an eligible State upon submission and approval of the application required by this notice. As specified by SAFETEA–LU, the amount of a grant to a State in each fiscal year shall not exceed 25 percent of the amount apportioned to the State for FY 2003 under 23 U.S.C. 402. The release of grant funds shall be subject to the availability of funding for that fiscal year. As required by SAFETEA–LU, in the first 3 fiscal years for which a State receives a grant, it shall be reimbursed for up to 75 percent of the costs of programs and activities authorized by Section 2011(d) of SAFETEA–LU, and in the fourth fiscal year for which a State receives a grant, it shall be reimbursed for up to 50 percent of the costs of programs and activities authorized by Section 2011(d) of SAFETEA–LU.

Use of Grant Funds

As specified by SAFETEA–LU, eligible uses of grant funds may include any of the following:

1. Programs for Purchasing and Distributing Child Restraints to Low-Income Families

States may use grant funds for programs to purchase and distribute child restraints to low-income families. However, as required by SAFETEA–LU, not more than 50 percent of the funds received in a fiscal year may be used for these programs. The child restraints purchased and distributed must be certified to meet applicable Federal Motor Vehicle Safety Standards. Low income is calculated at 185 percent of the Federal poverty level. A certified child passenger safety technician/instructor should supervise all child restraint distribution programs and ensure that adequate training based on the Standardized Curriculum is provided to those distributing the selected seats. The certified child passenger safety technician/instructor should also ensure that appropriate training is provided to the recipients of the seats.

2. Programs to Support Enforcement of Child Restraint Laws

States may use grant funds to carry out a program to support enforcement of child restraint laws. A successful enforcement program should increase enforcement efforts during national high-visibility law enforcement

mobilization campaigns and Child Passenger Safety (CPS) week.

3. Programs To Train Child Safety Professionals, Police Officers, Fire and Emergency Medical Personnel, Educators, and Parents Concerning All Aspects of the Use of Child Restraints

States may use grant funds to carry out a program to train child passenger safety professionals, police officers, fire and emergency medical personnel, educators, parents, and caregivers concerning all aspects of the use of child restraints. When training participants to become national Child Passenger Safety Technicians and/or Instructors, States must use the NHTSA Standardized Child Passenger Safety Training Program with training certification through the national certifying body. States are encouraged to conduct Child Passenger Safety awareness training using NHTSA approved courses.

4. Programs To Educate the Public Concerning the Proper Use and Installation of Child Restraints

States may use grant funds to carry out a program to educate the public concerning the proper use and installation of child restraints. States should develop and sustain a cadre of current nationally certified Child Passenger Safety Technicians to serve the public by staffing inspection stations/check-up events/clinics. States should distribute public information and education materials to the public. States should use NHTSA-developed materials that provide information on all the ''steps'' of child restraints, including infant seats, convertible seats, forward-facing seats, booster seats and safety belts, and should include information on selection, direction, installation and location.

Financial Requirements

Within 30 days after notification of an award, but in no event later than September 12, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating the funds to this program. A Program Cost Summary is necessary to ensure proper accounting for the Federal funds and is a precondition to receiving grant funds. Additionally, each fiscal year until all grant funds are expended, the State must document how it intends to use the funds in the Highway Safety Plan it submits pursuant to 23 U.S.C. 402 (or in an amendment to that plan).

Reporting Requirements

A State that receives a grant is required by SAFETEA–LU to submit a report describing how funds were obligated and expended. Each fiscal year until all Child Restraint grant funds are expended, a State must include this report in the Annual Report it submits for its highway safety program pursuant to 23 CFR 1200.33. For each of the eligible uses of grant funds selected by the State, include the following:

1. For programs to purchase and distribute child restraints for low-income families:

a. A description of the programs used to purchase and distribute child restraints for low-income families.

b. The number of child restraints distributed.

2. For programs to support enforcement of child restraint laws:

a. A description of the programs used to support enforcement of child restraint laws.

b. A list of participating law enforcement agencies and the counties they serve.

3. For programs to train child passenger safety professionals:

a. A description of the training classes conducted and the curricula used to train individuals and groups.

b. The number and location of training classes conducted and the individuals or groups trained.

c. The number of child passenger safety technicians certified.

4. For programs to educate the public:

a. A description of the programs used to educate the public concerning the proper use and installation of child restraints.

b. A list of child restraint inspection stations/check-up events/clinics, including their locations.

c. An estimate of the number of child restraints checked at inspection stations/check-up events/clinics.

APPENDIX 1—CHILD RESTRAINT PROGRAM CETIFICATION FORM—NEW OR CHANGED LAW

State: _____

Fiscal Year: _____

I hereby certify that the child restaint law, available at

_____

(include legal citations to all relevant provisions)

is (check one):

☐ in effect and being enforced,

☐ will be in effect on

_____

(date)

and will be enforced on

_____

(date)

and that the State (or Commonwealth) of:

_____

- will use the child restraint grant funds awarded exclusively to implement programs in accordance with the requirements of Section 2011(d) of SAFETEA–LU, Pub. L. 109–59;
- will administer the child restraint grant funds in accordance with 49 CFR Part 18;
- will provide to the NHTSA Regional Administrator a report describing the activities executed with child restraint grant funds and the accomplishments of the fiscal year; and
- will maintain its aggregate expenditures from all other sources for child restraint programs at or above the average level of such expenditures in State or Federal fiscal years (FY) 2003 and 2004.

_____

Governor's Highway Safety Representative

Date: _____

APPENDIX 2—CHILD RESTRAINT PROGRAM CERTIFICATION FORM—UNCHANGED LAW

State: _____

Fiscal Year: _____

I hereby certify that the State (or Commonwealth) of

_____

- is enforcing a child restraint law that has been approved by NHTSA to conform to the requirements of Section 2011(d) of SAFETEA–LU, Pub. L. 109–59 and that has remained unchanged since that approval;
- will use the child restraint grant funds awarded exclusively to implement programs in accordance with the requirements of Section 2011(d) of SAFETEA–LU, Pub. L. 109–59;
- will administer the child restraint grant funds in accordance with 49 CFR Part 18;
- will provide to the NHTSA Regional Administrator a report describing the activities executed with child restraint grant funds and the accomplishments of the fiscal year; and
- will maintain its aggregate expenditures from all other sources for child restraint programs at or above the average level of such expenditures in State or Federal fiscal years (FY) 2003 and 2004.

_____

Governor's Highway Safety Representative

Date: _____

Issued on: January 25, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. E6–1156 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23698]

Notice of Receipt of Petition for Decision That Nonconforming 2002–2005 Mercedes Benz CLK-Class (209) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002–2005 Mercedes Benz CLK-class (209) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002–2005 Mercedes Benz CLK-class (209) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2002–2005 Mercedes Benz CLK-class (209) passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2002–2005 Mercedes Benz CLK-class (209) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002–2005 Mercedes Benz CLK-class (209) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2002–2005 Mercedes Benz CLK-class (209) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002–2005 Mercedes Benz CLK-class (209) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster and cruise control lever. U.S. version software must also be downloaded to meet the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model lamps, reflective devices, and associated equipment.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S. version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S. version software, or installation of a supplemental relay system to meet the requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, sensors, and knee bolsters with U.S.-model components on vehicles that are not already so equipped, and (b) reprogramming the vehicle computer to the U.S.-mode to ensure compliance with the standard.

The petitioner states that the occupant restraints used in these vehicles consist of dual front airbags and combination lap and shoulder belts at the front and rear outboard seating positions. These manual systems are automatic, self-

tensioning, and are released by means of a single red push-button.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

Standard No. 401 *Interior Trunk Release:* Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

The petitioner also states that all vehicles will be inspected for conformity with the Bumper Standard found in 49 CFR part 581 and that any non-U.S.-model components necessary for conformity with this standard will be replaced with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–1184 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23699]

Notice of Receipt of Petition for Decision That Nonconforming 2005 and 2006 Ferrari F430 Passenger Cars Manufactured Before September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland (''J.K.'')(Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 and 2006 Ferrari F430 passenger cars manufactured before September 1, 2006 are identical

to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 302 *Flammability of Interior Materials,* and 401 *Interior Trunk Release.*

The petitioner states that the vehicles also conform to the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* installation of a U.S.-model instrument cluster. U.S. version software must also be downloaded to meet the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model: (a) Headlamps; (b) front side marker lamps; (c) rear side marker lamps; and (d) taillamp assemblies or modification of existing taillamps to conform to the standard.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S. version software to meet the requirements of this standard.

Standard No. 207 *Seating Systems:* Inspection of all vehicles and replacement of any non-U.S.-model components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* Installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard.

Petitioner states that the vehicle's restraint system components include dual front airbags, and combination lap and shoulder belts at the outboard front designated seating positions.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model tether anchorages in coupe model.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and replacement of any non-U.S.-model components with U.S.-model components on vehicles that are not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–1181 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23701]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Toyota RAV4 Multipurpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Toyota RAV4 multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Toyota RAV4 multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As

specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies, LLC, of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2005 Toyota RAV4 multipurpose passenger vehicles are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2005 Toyota RAV4 multipurpose passenger vehicles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2005 Toyota RAV4 multipurpose passenger vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Toyota RAV4 multipurpose passenger vehicles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 Toyota RAV4 multipurpose passenger vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster. U.S. version software must also be downloaded to meet the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model: (a) Headlamps; (b) front side marker lights; (c) rear side marker lights; and (d) taillamp assemblies or modification of existing taillamps to conform to the standard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S. version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S. version software.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, and sensors with U.S.-model components on vehicles that are not already so equipped, and; (b) installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard.

Petitioner states that the vehicle's restraint system components include U.S.-model airbags and knee bolsters, and combination lap and shoulder belts at the outboard front designated seating positions.

Standard No. 225 *Child Restraint Anchorage Systems,* inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model components to meet the requirements of this standard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–1183 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–23684; Notice 1]

Continental Tire North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America, Inc. (Continental Tire) has determined that certain tires it produced in 2004 and 2005 do not comply with S5.5(d) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, ''New pneumatic radial tires for light vehicles.'' Continental Tire has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental Tire has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Continental Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 2,500 model 235/85R16 C Grabber TR tires manufactured in 2004 and 2005. S5.5(d) of FMVSS No. 139 requires that each tire must be marked on each sidewall with the maximum load rating. The noncompliant tires are marked on the sidewall ''max load single 1380 kg (3042 lbs)'' whereas the correct marking

should be ''max load single 1400 kg (3085 lbs).''

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states,

All other sidewall identification markings and safety information is correct. A consumer acting on the incorrect information would underload the vehicle by 20 kg per tire. This incorrect load capacity molding does not affect the safety, performance and durability of the tire; the tire was built as designed.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 2, 2006.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: January 24, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–1161 Filed 1–30–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Surface Transportation Board, DOT.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures-productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.019 (1.9%) as the measure of average change in railroad productivity for the 2000–2004 (5-year) averaging period. This value is a decline of 1% from the current measure of 2.9% that was developed for the 1999–2003 period.

DATES: Comments are due February 15, 2006.

Effective Date: The proposed productivity adjustment is effective March 1, 2006.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov*. To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net*; phone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 23, 2006.

By the Board, Chairman Buttrey, and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–1187 Filed 1–30–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 24, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 2, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1146.

Type of Review: Extension.

Title: Applicable Conventions under the Accelerated Cost Recovery System PS–54–89 (Final).

Description: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rule.

Respondents: Business or other for-profit and Farms.

Estimated Total Burden Hours: 70 hours.

OMB Number: 1545–1948.

Type of Review: Extension.

Title: One-Time Dividends Received Deduction for Certain Cash Dividends from Controlled Foreign Corporations.

Form: IRS form 8895.

Description: Form 8895 is used by a U.S. corporation to elect the 85% dividends received deduction provided under section 965 and to compute the DRD.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 50,020 hours.

OMB Number: 1545–1957.

Type of Review: Extension.

Title: Notice 2005–64 Foreign Tax Credit and other Guidance under Section 965.

Description: This document provide guidance under new section 965 enacted by the American Jobs Creation Act of 2004 (Pub. L. 108–357). In general, and subject to limitations and

conditions, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. Section 9650(f) provides that taxpayers may elect the application of section 965 for either the taxpayer's last taxable year which begins before October 22, 2004, or the taxpayer's first taxable year which begins during the one-year period beginning on October 22, 2004.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 250,000 hours.

OMB Number: 1545–1956.

Type of Review: Extension.

Title: Rev. Proc. 2005–51, Revenue Procedure regarding I.R.C. 6707A(e) and Disclosure with the SEC.

Description: This revenue procedure provides guidance to persons who are required to disclose payment of certain penalties arising from participation in reportable transactions on forms filed with the Securities and Exchange Commission.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 429.50 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–1164 Filed 1–30–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 24, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 2, 2006 to be assured of consideration.

Financial Management Service

OMB Number: 1510–0042.

Type of Review: Extension.

Title: Claims against the U.S. for amounts due in case of a deceased creditor.

Form: FMS form SF1055.

Description: This form is required to determine who is entitled to funds of a deceased Postal Savings depositor or deceased award holder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

Respondents: Individuals or households.

Estimated Total Burden Hours: 180 hour.

Clearance Officer: Jiovannah Diggs (202) 874–7662, Financial Management Service, Room 144, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–1173 Filed 1–30–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 24. 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 2, 2006 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0083.

Type of Review: Extension.

Title: Excise Tax Return.

Form: TTB form F 5000.24.

Description: Businesses other than those in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on TTB F 5000.24. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 22,500 hour.

OMB Number: 1513–0118.

Type of Review: Reinstatement.

Title: Formulas for Fermented Beverage Products.

Description: Formula information is necessary to protect the public and collect revenue. Brewers must submit written notices to obtain formula approval.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 500 hour.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–1174 Filed 1–30–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 25, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 2, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1191.
Type of Review: Extension.
Title: INTL–868–89 (Final) Information with Respect to Certain Foreign Owned Corporations.
Description: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS International examiners to better audit the returns of U.S. corporations engaged in cross border transactions with a related party.
Respondents: Business or other for-profit and Individuals or households.
Estimated Total Burden Hours: 630,000 hours.

OMB Number: 1545–1041.
Type of Review: Extension.
Title: PS–102–86 (Final) Cooperative Housing Corporations.
Description: This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant stockholders of cooperative housing corporations.
Respondents: Business or other for-profit and Individuals or households.
Estimated Total Burden Hours: 625 hours.

OMB Number: 1545–1356.
Type of Review: Extension.
Title: REG–248770–96 (Final) Miscellaneous Sections affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
Description: The regulations provide guidance with respect to the recovery of administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Procedures that must be followed to recover such costs are set forth.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government.
Estimated Total Burden Hours: 86 hours.

OMB Number: 1545–1681.
Type of Review: Extension.
Title: Qualifications & Availability Form.
Form: IRS form A.
Description: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.
Respondents: Individuals or households.
Estimated Total Burden Hours: 45,000 hours.

OMB Number: 1545–1948.
Type of Review: Extension.
Title: One-Time Dividends Received Deduction for Certain Cash Dividends from Controlled Foreign Corporation.
Form: IRS form 8895.
Description: Form 8895 is used by a U.S. corporation to elect the 85% dividends received deduction provided under section 965 and to compute the DRD.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 50,020 hours.
Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,
Treasury PRA Clearance Officer.
[FR Doc. E6–1190 Filed 1–30–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Meetings: Citizens Coinage Advisory Committee

ACTION: Notification of Citizens Coinage Advisory Committee February 2006 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135 (b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting and Public Forum scheduled for February 28, 2006.
Date: February 28, 2006.
Time: 1 p.m. to 3 p.m.
Location: The United States Mint; 801 Ninth Street, NW.; Washington, DC; Second floor.
Subject: Review of designs for the Presidential $1 Coin Program and other business.
Interested persons should call 202–354–7502 for the latest update on meeting time and room location.
The CCAC was established to:
• Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
• Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
• Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Joyce Harris, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration or addressing the CCAC at the Public Forum is invited to submit a request and/or materials by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 23, 2006.

David A. Lebryk,
Acting Director, United States Mint.
[FR Doc. 06–905 Filed 1–30–06; 8:45 am]
BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 2, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0208.''

Send comments and recommendations concerning any aspect of the information collection to

VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131.

c. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract:

a. An architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor.

b. VA Forms 10–6131 and 10–6001a are used to record data necessary to assure the contractor provides sufficient labor and materials to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 2, 2005, at page 66486.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,341 hours.

a. VA Form 10–6298—1,000.

b. VA Form 10–6131—3,591.

c. VA Form 10–6001a—750.

Estimated Average Burden Per Respondent:

a. VA Form 10–6298—4 hours.

b. VA Form 10–6131—12 minutes.

c. VA Form 10–6001a—12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 21,955.

a. VA Form 10–6298—250.

b. VA Form 10–6131—17,955.

c. VA Form 10–6001a—3,750.

Dated: January 23, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–1145 Filed 1–30–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0570]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on claimants' perception on VA's healthcare services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0570'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Health Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0570.

Type of Review: Extension of a currently approved collection.

Abstract: VA use customer satisfaction surveys to obtain its patients perception on the type and quality of healthcare services they need and their satisfaction with existing services. The data collected will be used to improve the quality of healthcare services.

Affected Public: Individuals or households.

Estimated Annual Burden: 130,644 hours.

a. Ad Hoc Facilities Surveys (VA Medical Facilities) and Special Emphasis Programs Conducted at Headquarters—44,182 hours.

b. Pre-approved Local Facilities Surveys (VA Medical Facilities)—86,461 hours.

Estimated Average Burden Per Respondent:

a. Special Emphasis Programs Conducted at Headquarters—11 minutes.

b. Local Facilities Surveys (VA Medical Facilities)—6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 531,144.

a. Special Emphasis Programs Conducted at Headquarters—161,777.

b. Local Facilities Surveys (VA Medical Facilities)—369,367.

Dated: January 19, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–1146 Filed 1–30–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve a claimant's request to be released from personal liability on a Government home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 3, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or mail to: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrows complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the veteran-borrower to be released from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,000.

Dated: January 19, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–1147 Filed 1–30–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Notice of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Internal Revenue Service (IRS) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The purpose of this match is to compare income status as reported to VA with records maintained by IRS. The legal authority for this match is Section 6103(l)(7) of the Internal Revenue Code (26 U.S.C. 6103(l)(7)) and 38 U.S.C. 5317.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with data from the IRS income tax return information as it relates to unearned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to Be Matched: VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The IRS records will come from the Wage and Information Returns (IRP) Processing File, Treas/IRS 22.061, hereafter referred to as the Information Return Master File (IRMF), as published at 66 FR 63797 (December 10, 2001) through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

DATES: The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Pamela Liverman (212A), (757) 858–6148, extension 107.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: January 24, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–1144 Filed 1–30–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Internal Revenue Service (IRS). Data from the proposed match will be utilized to verify the unearned income (*i.e.* interest, dividends, etc.) of nonservice-connected veterans, and zero percent noncompensable service-connected veterans, whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

DATES: *Effective Date:* This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise.

ADDRESSES: You may mail or hand-deliver written comments to: Director, Regulations Management (00REG1), 810 Vermont Avenue, NW, Washington, DC 20420, Room 1068; fax to (202)273–9026; or e-mail through *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Gary M. Baker, Director, Health Eligibility Center (404) 235–1300.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 Public Law (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify matching findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. VHA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of VHA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Approved: January 24, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–1148 Filed 1–30–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 31, 2006

Part II

Department of Agriculture

Forest Service

National Forest System Land Management Planning Directives; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC02

National Forest System Land Management Planning Directives

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency final directives.

SUMMARY: The Forest Service is issuing ten (10) final directives to Forest Service Manuals 1900 and 1920 and Forest Service Handbook 1909.12; chapters zero code, 10, 20, 30, 40, 50, 60, and 80. These directives establish procedures and responsibilities for implementing national forest land management planning regulations at 36 CFR part 219, subpart A, published in the **Federal Register** on January 5, 2005 (70 FR 1023). These directives provide consistent overall guidance to Forest Service line officers and employees in developing, amending, or revising land management plans for units of the National Forest System.

DATES: These directives are effective January 31, 2006.

ADDRESSES: Copies of the directives are available on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/index* or on a compact disc (CD). Copies of the directives on a CD can be obtained by contacting Regis Terney by e-mail (*rterney@fs.fed.us*), by phone at 1–866–235–6652 or 202–205–0895, or by mail at Regis Terney, USDA Forest Service, Mailstop 1104, EMC, 3 Central, 1400 Independence Avenue, SW., Washington, DC 20050–1104.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–0895.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department adopted final planning regulations for the National Forest System (NFS) at 36 CFR Part 219, subpart A (70 FR 1023) (also referred to as the 2005 planning rule). The 2005 planning rule provides broad programmatic direction in developing and carrying out land management planning. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives system (36 CFR 219.1(c)).

The Forest Service directives consist of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Generally, the FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is generally the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

Need for Direction

Procedural and technical details associated with implementing the 2005 planning rule are needed by NFS units to begin consistent plan amendments or revisions across all NFS units to prevent confusion and to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

Public Participation

On March 23, 2005, the Forest Service issued 12 interim directives to FSM 1330, 1900, and 1920 and FSH 1909.12 asking for public comment. This notice of issuance involves final amendments for those interim directives, except for FSM 1330 and FSH 1909.12, chapters 70 and 90. FSM 1330 and FSH 1909.12, chapters 70 and 90 will be issued separately.

Comments were submitted by mail, facsimile, and electronically. During the 90-day comment period (ending on June 21, 2005), the agency received 365 original responses and 8,727 copies of one form letter. These responses were analyzed by the Content Analysis Group and documented in a Content Analysis Report. Of the 365 original responses, the Forest Service received responses from 324 individuals and 41 organizations, of which 150 were letters, 214 were forms of various types, and 1 resolution. The Forest Service received responses from 49 states as well as from the District of Columbia, Puerto Rico, Army Post Office/Fleet Post Office, and foreign nations.

Response to Comments

Overview

In response to comments, the Forest Service made substantive changes to the interim directives issued on March 23, 2005, by decreasing the length approximately 25 percent and reorganizing the text. This was accomplished primarily by:

1. Reviewing direction to remove redundancies.
2. Questioning the need for the direction.
3. Discussing major topics once.
4. Using more cross-referencing.
5. Removing detailed exhibits from the final directives and placing, at a later date, more useful exhibits in technical guides on the Technical Information for Planning Site (TIPS) Web site at *http://www.fs.fed.us/TIPS.*
6. Moving detail about plan components, planning process, monitoring, sustainability, and science from FSM 1920 to the Forest Service Handbook (FSH) 1909.12.
7. Moving all information about the objections process from FSM 1926 of the interim directives to FSH 1909.12, chapter 50.

In addition, the Forest Service moved the previous content of FSM 1922 to FSM 1926. Forest Service Manual 1926 now provides procedures to revise or amend plans using provisions of the planning regulations in effect before November 9, 2000 (1982 planning rule) for those Responsible Officials that choose to continue using those procedures in accord with 36 CFR 219.14. The Forest Service moved FSM 1922 because many readers confused the procedures for the 2005 planning rule with the procedures for using the 1982 planning rule.

Key Issues

Decisionmaking Process

Laws

Comment: The Forest Service should comply with all applicable laws and with Executive Order 13352.

Response: Forest Service Manual (FSM) 1901.1 identifies the laws setting forth the requirements for Forest Service planning, while other applicable authorities are discussed at FSM 1011. In addition, Responsible Officials are required to comply with applicable laws in development, revision, amendment, and implementation of plans (70 FR 1034, Jan. 5, 2005).

Executive Order (E.O.) 13352 provides that specific Federal agencies, including the USDA, should implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation and emphasizes local participation in Federal decisionmaking. The public participation requirements from the 2005 planning rule (36 CFR 219.9) and the directives (FSM 1921.61 and FSH 1909.12, sec. 30) ensure that the interested public, state agencies, and local governments have the opportunity to participate. The Forest Service

believes that the 2005 planning rule and the Forest Service directives are consistent with E.O. 13352.

State Participation

Comment: The Forest Service should ensure that states play a meaningful role in the planning process. This should include encouraging states to establish a state governing body, chartered by that state, with the authority to create general forest policies and produce a state guidance document for the management of Federal forestlands. This could define a state's position on the niche that Federal forestlands play in the state, clarify state expectations, and build support for Federal land management plans with State and local constituents.

Response: The Forest Service agrees that states should play a meaningful role in the planning process, including a role in defining the niche that National Forest System lands play in each state. The 2005 planning rule (36 CFR 219.9) and directives (FSM 1921.61) encourage that role. The Responsible Officials will work with state officials to jointly agree on the type and amount of participation. The Forest Service does not believe that a specific approach to state involvement should be identified in the directives because the state should decide what specific approach may be appropriate for them.

Cooperating Agency

Comment: The Forest Service should provide local and state agencies the option of cooperating agency status for developing amendments or plan revisions.

Response: Under Council on Environmental Quality regulations for implementing the National Environmental Policy Act of 1969 (NEPA); cooperating agency status is appropriate for other Federal, State, or local governments when they have jurisdiction by law or special knowledge about the action being addressed in a NEPA analysis (40 CFR 1501.6). When other Federal, State, or local governments have jurisdiction by law or special knowledge about the action being addressed, the Responsible Official is encouraged to work with other State and local governments to determine if cooperating agency status is the most appropriate way for them to be involved. State and local governments contacted when the Forest Service is preparing a plan, plan amendment or plan revision are encouraged to identify their special expertise and/or jurisdiction by law to assist the local Responsible Official in determining appropriate designations as cooperating agencies. The Forest Service believes that the local Responsible Official is most able to determine how to involve state and local governments.

Governor's Consistency Review

Comment: The Forest Service should add language to the FSM and create a process for state review of land management plans similar to the Governor's Consistency Review statutes created under the Federal Land Policy and Management Act (FLPMA).

Response: The National Forest Management Act of 1976 (NFMA) does not have a requirement equivalent to the FLPMA requirement for a governor's consistency review. The Forest Service believes that the collaborative processes in the 2005 planning rule and the Forest Service directives, along with the potential for cooperating agency status when the Responsible Official and a state concludes this to be appropriate, will provide for meaningful State involvement in the planning process. The Forest Service believes that early state involvement, such as identifying a need for change and developing plan components, will be more beneficial to the Forest Service and the states than will a consistency review late in the planning process. States will also be invited to comment on proposed plans during the 90-day comment period.

National Association of State Foresters

Comment: The Forest Service should coordinate with the National Association of State Foresters on planning, monitoring, and assessments.

Response: The Forest Service encourages the National Association of State Foresters to participate in Forest Service planning at all levels.

Comment Period

Comment: The Forest Service should add 60 days to the comment period.

Response: In past planning efforts, a 90-day public comment period on a proposed plan or plan revision has proved adequate. Historically, the Forest Service has extended comment periods where circumstances about a specific planning effort have merited an extension. The 2005 planning rule does not preclude extending the comment period when needed.

Framework of Directives

Need for Regulations

Comment: The Forest Service should address NFMA's requirement in the Code of Federal Regulations and not in the Forest Service Directives System.

Response: The Forest Service interprets NFMA to afford the Forest Service discretion to provide policy guidance through regulations or the Forest Service directives. Final regulations for implementing the NFMA were published in the **Federal Register**, January 5, 2005 (70 FR 1022). Those regulations provide that guidance in addition to that provided in the regulations will be provided in the directives. Directives are available at *http://www.fs.fed.us/im/directives*.

Requirements and Content

Comment: The Forest Service should have standards rather than weak guidelines, which allow too much discretion.

Response: The decision to use guidelines rather than standards was made in the 2005 planning rule because the standards, as used previously in land management plans, proved too restrictive. The directives provide clarification about how guidelines should be written (FSH 1909.12, sec. 11.3). The Forest Service believes that guidelines will provide the necessary sideboards for designing projects and authorizing activities, while allowing line officers needed discretion to address site-specific situations.

Comment: The Forest Service should create directives that are inclusive of all direction needed by the planners rather than awaiting white papers or technical guides.

Response: The directives strive to provide the guidance needed to develop, revise, and amend plans. However, specific methods and analytical tools based on new information and changing technologies are expected to develop rapidly as the Forest Service gains experience carrying out the new planning and environmental management system processes. The Forest Service believes that using technical guides will allow more rapid response to these changes; such as, better examples of desired conditions, objectives, and associated monitoring programs, than could occur if all detailed planning techniques were placed in the directives.

National Direction

Comment: The Forest Service should adopt a system with limited national direction for forest planners on complying with national legal mandates.

Response: The 2005 planning rule and the Forest Service directives for implementing that rule are intended to provide the necessary guidance essential to ensure quality plans are developed without unduly limiting local innovation in the process and the plan content.

Plan Consistency

Comment: The Forest Service should provide guidance to ensure consistency among Forests.

Response: It is the responsibility of the Regional Foresters (FSM 1921.04a) to coordinate planning between units in the region and between regions where units adjoin. The directives provide a framework for developing, revising, and amending plans; while allowing components of plans to adapt to local situations.

Project Information

Comment: The Forest Service should provide complete and accurate information about projects. It is unclear how much explanation of possible project schedules and locations will occur in the plan.

Response: Plans are intended to be strategic documents, providing limited or no information on schedules and locations of projects. Each plan will list proposed and possible actions anticipated to provide an array of opportunities or resource management programs (FSH 1909.12, sec. 11.2) and a planned timber sale program, including proportion of probable harvest methods (FSH 1909.12, sec. 65.4). Project disclosure comes at the project planning level.

Cumulative Effects

Comment: The Forest Service should include requirements for cumulative effects analysis in the Forest Service directives.

Response: Cumulative effects analysis occurs as a part of project-level planning in accord with NEPA (FSM 1950, FSH 1909.15) rather than through forest planning. The comprehensive evaluation report (FSH 1909.12, sec. 24.2), is intended to help provide context for project-level cumulative effects analyses. The comprehensive evaluation report will be updated at least every 5 years.

Length and Clarity of Directives

Comment: The Forest Service should shorten the length of the Forest Service directives. The sheer length of the directives makes them difficult to absorb. However, some respondents thought that the Forest Service should acknowledge that all sections of the Forest Service directives are incomplete, conceptual, ambiguous, and lack guidance about how concepts may be evaluated or applied and thought they should be clearer and more consistent.

Response: The final directives have been reduced approximately 25% from the interim directives to improve clarity and remove inconsistencies identified by respondents. More guidance on methods will be available in technical guides.

Guideline Description

Comment: The Forest Service should acknowledge that the statement ''Direction that compels us to do action is not appropriate'' (FSH 1909.12, sec. 12.23b) is an inappropriate statement. Another respondent stated that the directives system is not a substitute for plan direction (FSH 1909.12, sec. 12.11, para. 3, item 3).

Response: Although it has been reworded to provide clarity, the concept that guidelines should not be written to force action remains unchanged. Guidelines are intended to guide implementing actions, not cause actions to occur. The description of guidelines has been moved to FSH 1909.12, section 11.13 in the final directives.

The directives system is not a substitute for plan direction. It would be redundant to repeat in the plan guidelines or technical design specifications what already exists in law, regulation, or agency directives. Where appropriate, these are referenced in a plan rather than repeated.

Legal Considerations

Litigation

Comment: The Forest Service should acknowledge that the 2005 planning rule is being litigated and use of the directives could be found invalid.

Response: The Forest Service recognizes the potential implications from ongoing litigation of the 2005 planning rule; however, these implications are outside the scope of the directives.

Plan Implementation

Comment: The Forest Service should include stipulations in the Forest Service directives that allow the public to challenge the agency in court if it fails to live up to a plan.

Response: The Forest Service is committed to designing and carrying out activities consistent with plans. Administrative procedures are in place that allow the public appeal (36 CFR 215) or object (36 CFR 218) to certain management actions.

Consistency With NFMA

Comment: The Forest Service should ensure that the directives are in accord with NFMA, including the act's biodiversity requirements.

Response: The Forest Service believes that the 2005 planning rule, and the Forest Service directives for carrying out that rule, are consistent with the requirements of NFMA. The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by NFMA, calls for plans to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area (RPA, sec. 6(g)(3)(B)). The 2005 planning rule (36 CFR 219.10(b)) provides for sustaining ecological systems by maintaining ecosystem diversity and species diversity. The Forest Service directives provide added guidance in FSM 1921.73 and FSH 1909.12, section 43, to provide for diversity of plant and animal communities.

National Trails System Act

Comment: The Forest Service should specifically list the National Trails System Act in the Forest Services directives as an applicable law.

Response: Forest Service Manual 1920.11 identifies statutory authorities relevant to planning and references other applicable authorities found in FSM 1011, including the National Trails System Act.

Forest Planning

Forest Planning Versus Project Planning

Comment: The directives should acknowledge the increased role for project planning and provide guidance about how forest and project planning will link together. The interim directive's discussion of plan to project evaluation is too generic; for example, when in the process would cumulative effects on watershed be evaluated?

Response: Forest Service Handbook 1909.12 sets up procedures for developing, revising, and amending plans, as needed, to carry out the planning rule. The rule at 36 CFR 219.2(c) specifies that not one of the requirements of the rule apply to projects except as specifically provided. The final directives at FSH 1909.12, section 29, address how potential projects are identified and the finding that the project is consistent with the plan. Project analysis is discussed in detail in FSH 1909.15; agency procedures for compliance with NEPA. These directives and Council on Environmental Quality regulations at 40 CFR 1500 to 1508 guide the environmental analysis for projects, including analysis of cumulative effects. Although the Forest Service expects that plan development, revision, and amendment will usually be categorically excluded, the comprehensive evaluation report will help set the context for project level analysis.

Need for Change

Comment: The general premise that plan revisions will address only those parts of plans needing change and the premise that the new planning regulations and directives provide a new paradigm for planning are in conflict. The emphasis should be on a need for change.

Response: Forest Service Handbook 1909.12, sections 24 and 25, outline an adaptive management framework for annual and comprehensive evaluations. An important result of these evaluations is to determine the need for change in the plan or in monitoring requirements. The 2005 planning rule significantly improves the process for plan development, revision, and amendment so that the attention of the Forest Service and the public can focus on only those items that appear to need change. The Forest Service does not see this as a conflict in the two premises.

Adaptive Management Practices

Comment: An adaptive management approach will enable the Forest Service to keep up with the best available science and to better respond to changing conditions.

Response: The Forest Service agrees. An adaptive management framework is a cornerstone for the 2005 planning rule and the final directives.

Mandatory Standards

Concern: The Forest Service should continue to call for plans to contain mandatory, environmentally protective standards. Without quantitative, measurable, performance standards the plans will lack commitment, because performance cannot be measured or verified. Guidelines do not serve this purpose because deviations can be made as individual projects are designed. This defeats establishing a certain ''minimum'' natural resource protection. This makes plans meaningless and circumvents the NFMA requirement to adopt plans and carry out projects consistent with those plans (16 U.S.C., sec. 1604). This, and other attempts to increase leeway for the Forest Service, does not make sense given the agency's historical lack of accountability.

Response: The 2005 planning rule does not include standards as a plan component. The preamble to the proposed rule and the response to comments for the final rule state the reason for using guidelines. Conditions on the ground are variable and the Forest Service believes that mandatory standards are too restrictive. Guidelines allow more flexibility for making adjustments based on site-specific conditions. The guidelines in plans are expected to be measurable. Guidelines should be written with inherent latitude and flexibility to carry out projects and activities so that adjustment is seldom an issue. However, if adjustment of guidelines is necessary, the project analysis and decision document must articulate the reasons for adjusting the guidelines.

Forest Management Prescription

Comment: Forest management prescriptions should be used to set performance standards and ensure needed protections and desired conditions. An example is the Appalachian Trail, which is now has specific management prescriptions in eight national forest plans, ensuring consistent administration of the trail.

Response: Forest Service Handbook 1909.12, section 11.1 specifically states that plan components may be developed for areas in units; usually called management areas or geographic areas. Nothing in the final directives prohibits the continued use of management areas; as for example, those used by several national forests to provide consistent management guidance for the Appalachian Trail. The Forest Service believes that plan components; including desired conditions, guidelines, and suitability of areas will provide the needed framework for providing desired experiences, conditions, and protections.

Plan Amendments

Comment: The Forest Service should not allow a plan to be amended through site-specific project decisions because this discretion would be abused, used mainly to make easier commodity development, or would evade the rigorous cumulative effects analysis requirements intended by NEPA.

Response: Forest Service Handbook 1909.12, section 25.4 and 35 CFR 219.8(e) provide that the plan can be amended through approval of a project or activity. This type of amendment would be considered along with considering whether the project should be modified or rejected entirely if the Responsible Official decides the project is not consistent with the plan. Conditions on the land are highly variable and the provision for amendments through projects is an important aspect making plans adaptable and workable. Documentation of the reason for the plan amendment would be included with the project documentation. Amendments through projects may be considered for a variety of projects, not just those that would produce commodities. NEPA compliance at project level is unchanged.

Management and Geographic Areas

Comment: The Forest Service should not call for plans to contain management and geographic areas.

Response: Forest Service Handbook 1909.12, section 11.1 does not call for management and geographic areas. It is permissive in that a unit could use one, both, or neither.

Minimum Components

Comment: The Forest Service should ensure that plans identify the minimum components and commitments needed to manage multiple uses on a sustainable basis and to maintain ecological integrity of forest lands. Forest Service Manual 1921.11 states that plan components should be realistic and achievable, reflecting the unit's anticipated budget, staffing and technical capability. Budget levels should not dictate whether an adequate plan is prepared to reach missions and objectives.

Response: Plans must provide for biological diversity and address the ecological, economic, and social parts of sustainability as required by the 2005 planning rule (36 CFR 219.10 and FSH 1909.12, ch. 40). Past plans have included desired conditions and objectives that could not be reached. Having unrealistic plan components does not enhance sustainability, but does cause considerable frustration and the feeling that promises were broken. The Forest Service believes that the provisions of FSM 1921.11 are important and will lead to a much clearer focus on setting priorities for plan implementation. These plan components can always be adjusted if more resources become available.

National Strategic Plan

Comment: The Forest Service should establish a national framework of goals and objectives in its Strategic Plan designed around key outputs mandated through Congressional direction. Lack of a consistent framework may cause confusion and lead to many different frameworks for developing land management plans. There is an inherent tension between providing consistency between plans and providing flexibility in the plans to address circumstances that are unique to individual forests.

Response: The Forest Service's National Strategic Plan sets up goals, objectives, performance measures, and strategies for management of the NFS mission areas (36 CFR 219.2(a)). Specific performance measures are identified. The Strategic Plan

establishes a national vision, based on the Resource Planning Act assessment and the 127 land management plans for forests, grasslands, and prairies (FSM 1906.11(b)). The Regional Foresters are required to ensure use of the Forest Service National Strategic Plan as a context for developing or refining desired conditions (FSM 1921.04(a)). The Forest Service agrees that there should be a link between unit plans and the National Strategic Plan. This link is addressed in the directives. The link works both ways, with the unit plans considering national goals and objectives and the National Strategic Plan considering the plans of each unit.

Plan Set of Documents

Comment: The Forest Service should include in the plan set of documents any material that may have been used to formulate the management plan.

Response: The plan set of documents details that were in FSH 1909.12, chapter 50 have been removed from the directives and placed in a technical guide on the Technical Information for Planning Site (TIPS) Web site at *http://www.fs.fed.us/TIPS.* The Forest Service believes that detailed guidance and procedures for the plan set of documents and the planning record are more appropriate for a technical guide. The description of the plan set of documents is in the planning rule at 36 CFR 219.7(a)(1). The plan set of documents is not limited to only those things listed in the rule. The Forest Service believes the documents included should be clearly relevant to plan development and components and should be limited to final documents.

Options

Comment: There is no guarantee that the Forest Service will consider options. Not considering options may be illegal.

Response: Forest Service Handbook 1909.12, section 25.32 discusses considering options to proposed changes in plan components. Options may not be required for some proposed changes that are limited in scope or if there are no choices to the proposal, such as amendments needed to put into effect conservation strategies for federally-listed threatened or endangered species. Options can be used as a valuable part of the collaborative approach to plan amendment, revision, or development. Options would be developed with public input and would look at a range of potential plan components. Options would not be needed for those components of a proposed plan where the public is in agreement with the proposal. The Forest Service believes that this iterative and collaborative approach will be useful, but should be used only where feasible options are available. There are no legal requirements that would mandate options be considered every time the plan is changed.

Legal Problems

Comment: The Forest Service should consider legal problems that will arise from a planning process that is too casual, especially if the directives are not binding.

Response: The planning rule and directives establish a planning process and provides a framework that complies with NFMA. As Responsible Officials develop, revise, or amend plans they are constrained and guided by a large body of law, regulation, and policy, as well as, public participation and oversight to ensure full legal compliance.

Multilevel Planning

Comment: The directives description of multilevel planning is inconsistent with the planning rule. The rule is for plan development only and discussion of considering cumulative effects from projects is not appropriate.

Response: The description of the Forest Service planning process has been moved to FSM 1906. Reference to cumulative effects from projects during the comprehensive evaluations has been deleted, although the Forest Service does believe that comprehensive evaluations should use available data from several sources and some information developed during project development and implementation will be useful.

Supreme Court Decisions

Comment: The Forest Service should not try to extend the Supreme Court decisions in *Ohio Forestry and Norton* v. *Southern Utah Wilderness Association (SUWA)* to forest planning. The questions addressed in these cases do not address the questions of the 2005 planning rule and directives about whether and environmental assessment (EA) or an environmental impact statement (EIS) is required for preparation of a programmatic plan.

Response: The explanation for this approach to compliance with NEPA is discussed in detail in the preamble to the final 2005 planning rule (70 FR 1034, Jan. 5, 2005). Many factors, besides the Supreme Court decisions cited, led to the approach in the final rule and directives.

Desired Conditions

Comment: The directives should give added guidance on how to describe and select desired conditions from an ecological standpoint. Historical conditions or range of variability may not be a suitable guide. The directives should include how climatic, cultural and historical changes have and will influence desired conditions.

Response: A technical guide will be available on the Technical Information for Planning Site (TIPS) Web site at *http://www.fs.fed.us/TIPS.* The range of variation under historic disturbance regimes is an important context; however, additional direction on how to develop desired conditions is found in FSH 1909.12, chapter 40.

Comment: Desired conditions should have an expanded role as a key plan component.

Response: Plan components are discussed in FSH 1909.12, section 11. The Forest Service agrees that desired conditions are a key plan component. Other components such as objectives, guidelines, and suitable uses must be developed consistent with moving toward or maintaining desired conditions.

Comment: The Forest Service should have an appropriate focus of desired conditions, whether on ecological, social or economic elements. Desired conditions should focus on vegetation conditions with general statements on the contribution to a range of recreation uses and contributions to economies through commodity production. Desired conditions should include considerable detail on social and economic elements, such as sense of remoteness, cultural heritage, and how ecosystem management will address human-related issues.

Response: Desired conditions describe ecological, social, and economic attributes and should be integrated to consider the needs of all relevant resources, ongoing activities, and natural processes (FSH 1909.12, sec. 11.11). The statements of desired conditions will vary considerably from unit to unit based on conditions and public wants. Some statements of desired conditions may focus more on vegetation conditions while others focus on social and economic conditions and contributions. It would be inappropriate for the directives to prescribe an emphasis that would be used on every unit.

Realistic Objectives

Comment: The Forest Service should develop realistic desired conditions that can be maintained under expected budgets besides developing realistic objectives for the plan period. Desired conditions should be changed to produce more revenue if adequate

funding is not received to maintain desired conditions.

Response: The Forest Service agrees that all plan components should be realistic and achievable. They should show the unit's anticipated budget levels, staffing, and capability for the plan period (FSM 1921.11). Through annual and comprehensive evaluations during plan implementation, the Forest Service may identify the need to adjust plan components that appear to be unrealistic. Adjustments in plan components would not always produce more revenue for plan implementation, as annual budgets are largely dependent on Congressional appropriations.

Monitoring

Comment: The Forest Service should use monitoring as a tool to identify information that may improve land productivity or provide alternative means of meeting desired conditions.

Response: The Forest Service believes that the primary purpose of monitoring is to find out whether plan implementation is reaching plan objectives and desired conditions. The Forest Service agrees that monitoring the effects of management activities on the productivity of the land is important. Monitoring may trigger the need to look for alternative means of meeting the desired conditions.

Measurable, Quantitative Criteria

Comment: To be a legitimate plan, it must include measurable, quantitative criteria for goals and objectives, including desired conditions, and make an affirmative commitment to reaching those results. Desired conditions are the foundation of a plan. A document lacking affirmative commitments to reaching goals, desired conditions, and objectives is not a plan.

Response: The Forest Service agrees that desired conditions and objectives should be measurable. If monitoring and plan evaluation identify that desired conditions cannot be reached, the plan should be amended or revised (FSH 1909.12, sec. 11.11). The Forest Service intends to carry out projects and activities to maintain or make progress toward desired conditions and objectives. However, because there is uncertainty, the Forest Service believes plans are aspirational.

Role of Responsible Official

Comment: The Forest Service should clarify who is the Responsible Official.

Response: ''Responsible Official'' is defined in the definitions section of the planning rule (36 CFR 219.16). The Responsible Official is the official with the authority and responsibility to oversee the planning process and to approve plans, plan amendments, and plan revisions. The Responsible Official for plan development, revision, and amendment is the forest, grassland, or prairie supervisor (FSM 1921.04(b)).

Comment: The Responsible Official should be given more flexibility to respond to scientific advancements and threats from invasive species, disease, or wildfire. Another respondent was concerned that Responsible Officials have too much discretion and that the directives should include safeguards against abuse.

Response: The Forest Service believes that the authority and discretion for plan amendment, revision, and development provided by the 2005 planning rule and the directives is appropriate. The planning process is greatly streamlined, specifically with the intent of improving Forest Service capability to adapt to changing conditions and new information. Although there is greater discretion, the decisions of the Responsible Official are constrained and guided by a large body of law, regulation, and policy, as well as public and agency participation and oversight.

Comment: The Forest Service should clarify the discretion of the Responsible Official to set the scope and applicability for project decision amendments so that every time a project was inconsistent with the plan, the Responsible Official would not be able to amend the plan to allow that project to go ahead; making the plan meaningless.

Response: The discussion of amendments through project decisions is now set out at FSH 1909.12, section 25.4. The Forest Service has clarified that the Responsible Official may limit the scope and applicability of the plan amendment to apply only to the project or activity area. It is important to understand that these amendments would not exempt the project or activity from plan compliance, but would adjust plan components in response to more site-specific information gained through the project analysis. There is no way to find out in advance how often the option of amending a plan will be used; however, the directives advise that plans should be monitored to identify if there is a need for change over all or part of the plan area.

Role of Science in Planning

Comment: The Forest Service should require the use of the best available science in forest planning. The role of science must not be diminished to just ''one aspect of decisionmaking,'' an aspect superseded by ''competing use demands,'' for example.

Response: In FSM 1921.81, the Forest Service describes the steps required to ensure that the best available science is taken into account. In FSH 1909.12, section 41.1 direction was added about the scope, timing, and other aspects of a review. Forest Service Handbook 1909.12, section 41.22, table 3, lays out the many steps in developing a plan and suggests appropriate reviews for each step.

Wildlife Conservation

Comment: Science needs to be a major factor; monitoring and regulations need to be in place to keep a natural balance and conserve our wildlife, endangered species and their important habitats.

Response: The Forest Service concurs that science is a major factor in decisionmaking. As written, the directives tie monitoring and science together.

Identification of Best Available Science

Comment: The evaluation and determination of what science constitutes the best available science should be conducted by people with the appropriate scientific knowledge and background.

Response: In response to comments, direction has been added to FSH 1909.12, section 41.23 that describes the qualifications of the reviewers. Forest Service Handbook 1909.12, section 41.1 provides more direction.

Consistency in the Use of Science

Comment: The Forest Service should be consistent in its use of science. Under the directives, some forests will have plans based on top-notch scientific review, others will not.

Response: To ensure consistency and quality, FSM 1921.8 and FSH 1909.12, section 41 provide direction on how to take into account science. FSH 1909.12, section 41 emphasizes that the level of review must be commensurate with the controversy, uncertainty, or risk associated with the planning activity. To always require a type or scale of review means the same review would be done on all planning efforts regardless of the complexity or scope. The Responsible Official needs the flexibility to conduct a review that is appropriate to the issue being reviewed.

Definition of Best Available Science

Comment: The Forest Service should require the Responsible Official to define the ''best available science.'' How will this be done? Again, the directives contain no direction for the responsible officials.

Response: Forest Service Manual (FSM) 1921.85 states, ''the Responsible Official shall conduct timely and substantive reviews of the science applied during the planning process.'' Best available science cannot be described in a directive, but can be taken into account by using appropriate procedures. A four-step discovery process for best available science, modified in the final directives, is described in FSM 1921.81. When the four-step process is followed and an appropriate review is conducted the best available science should be taken into account and properly influence plan components. Forest Service Handbook 1909.12, section 41.23 requires that reviewers be independent of the plan development and implementation process.

Responsible Official Discretion

Comment: The Forest Service should limit how cost influences the appropriate science determinations that are left to the Responsible Official.

Response: The Forest Service believes that the direction found in FSM 1921.8 and FSH 1909.12, section 41 provides enough direction to Responsible Officials regarding the role of science and properly directs the Responsible Official to consider cost in assessing how to best apply science in the planning effort. The Responsible Official is required to disclose how best available science was taken into account.

Scientific Data From Citizen Groups

Comment: The Forest Service should consider scientifically sound data provided by citizen groups. Citizen groups frequently contribute scientifically sound data and analysis that counters and balances the often pro-resource harvesting plans promoted by Forest Service employees.

Response: The Forest Service agrees that citizen groups need to have meaningful participation in the planning process. The input of citizens can influence the application of science. The methods for gathering and considering citizen input are addressed in the directives under collaboration (FSM 1921.6 and FSH 1909.12, sec. 30).

Define ''Other Appropriate Means''

Comment: The Forest Service should define the phrase ''other appropriate means'' as used in the Forest Service directives to describe how the Responsible Official documents that science was appropriately interpreted and applied in the planning process.

Response: The final directives identify four levels of review and address when and how to use them in FSH 1909.12, section 41.

Use of Systematic Evidence Review

Comment: The Forest Service should consider a system of gathering and synthesizing scientific information that is similar to the ''Systematic Evidence Review,'' a system used by the medical profession to gather information for clinical practice guidelines.

Response: The Forest Service believes that the method described in FSM 1921.81 represents the state-of-the-art for science review for natural resource management, (U.S. Department of Agriculture, Forest Service. 2003. Science Consistency Reviews: A Primer for Application. FS–771. Washington, DC: U.S. Department of Agriculture, Forest Service. 9 p. U.S. Department of Agriculture, Forest Service. 2003. The Science Consistency Review: A Tool to Evaluate the Use of Scientific Information in Land Management Decisionmaking. FS–772. Washington, DC: U.S. Department of Agriculture, Forest Service. 32 p.).

Public Participation and Collaboration

Public Input

Comment: The Forest Service should provide more opportunity for public input to the planning process to decrease litigation, make the process more democratic, comply with NFMA, ensure resource protection, ensure an appropriate range of alternatives, and determine the extent of plan revisions.

Response: Public participation in land management planning is required under NFMA (16 U.S.C. 1604(d)) and the Forest Service will continue to fulfill its obligations to involve the public in meaningful ways. The NFMA stresses public review of plans and revisions while allowing other participation. The Forest Service believes the agency directives are a better reflection of public and agency interest in an open process that includes collaborative ways of working together rather than methods that are more formal. Not everyone wants to participate or provide input the same way. The Forest Service believes Responsible Officials should have the discretion to design processes that meet participant and agency needs and; as appropriate, go beyond public review and public meetings. The directives (FSH 1909.12, sec. 31.4) provide Responsible Officials with the discretion to select the most current and suitable activities for meeting requirements; yet, they require those officials to involve the public in specific planning activities, including evaluating whether need for changing the plan exists, setting up the basis for that need, developing plan components, designing the monitoring program, and conducting regular comprehensive evaluations. These expectations go beyond land management planning and into the activities of public land management.

Public Scrutiny of Plan Documents

Comment: The interim directives left open the possibility that public scrutiny of some plan documents might not occur, specifically referring to public involvement and scrutiny of management review documents and annual monitoring reports.

Response: Responsible Officials should make publicly available information developed as part of the planning process (FSM 1921.65). Legal considerations, such as the Privacy Act or the FOIA, can impose limits on certain disclosures affected by those considerations. The section in the interim directives about management review has been removed. The directives, FSH 1909.12, section 31.5, now clarify the expectation that public participation will occur in identifying the need for change. Also, Responsible Officials have the discretion to involve interested and willing members of the public in agency work, including the work of annual monitoring. The Forest Service's long history of working with the public to do the work of responsible and adaptive public land management will continue.

Roles of Line Officers

Comment: The interim directives referred to line officers playing a variety of roles (FSM 1921.61 in the ID) during a collaborative process and it was unclear whether this referred just to roles or to some implied detail of the intended public participation process.

Response: The past reference has been removed because it did not provide direction to agency officials and was, therefore, confusing to readers.

Decision Responsibility

Comment: The interim directives were unclear about whether the agency has ultimate responsibility for planning decisions, specifically referring to interim direction about shared leadership as a goal of public participation and collaboration.

Response: In NFMA, Congress has charged the Forest Service with the responsibility and authority to manage lands in agency jurisdiction and has made the agency solely accountable for the results of that management. Even so, the agency is committed to exercising its responsibility with the help of willing and interested individuals, groups,

tribes, state and local governments, agencies, and other partners. The Forest Service agrees that the phrase shared leadership was unclear. The goal is to build better plans using principles that increase our ability to put into effect, evaluate, and adapt those plans by working with others who are willing to participate.

Responding to Specific Public Comments

Comment: Agency responses to public comments should address every comment individually, rather than by grouping similar comments, because salient points are often missed when grouping occurs.

Response: Forest Service Handbook 1909.12, section 25.34 addresses agency response to public comments. The Forest Service believes that the directives provide Responsible Officials with appropriate discretion to respond to individual comments when salient points merit such a response while responding to groupings of similar comments when a common salient point is evident. The emphasis is on concise responses to salient points that substantively improve the land management plan components or that differ from or support the Responsible Official's reason for approving the plan.

Collaboration Aspirations

Comment: The interim direction about collaboration contained vague and poorly defined aspirations that may negatively affect agency aspirations for collaboration, in part by stressing a bureaucratically centered approach to collaboration.

Response: The Forest Service agrees that the directives are not the only mechanism by which the agency will realize its goal of collaborative public land management and that aspirations, while needed, are not enough. The directives set up the goal of building better plans using public participation and collaboration activities; clarify the Responsible Official's discretion about timing and methods of those activities; and set up agency policy for public participation in land management planning. The principles the agency will follow when meeting this goal include building and maintaining working relationships, trust, and collaborative capacity; encouraging a shared understanding of values, concerns, roles, and the responsibilities of all participants; and other principles found in FSH 1909.12, section 31.2. The Forest Service believes that this goal and these principles are an important part of realizing the agency's goal of collaborative public land management.

Define Collaborative Process

Comment: A clearly defined collaborative process is needed to ensure uniformity, consistency, and enforceable standards. Some respondents commented that Forest Supervisors could go ahead unilaterally and not involve the public at key points. Others commented that a measure of effectiveness is needed and that consultation with social scientists should occur when developing that measure. Lastly, a respondent commented that the term ''vision'' and the phrase ''strategy development'' need definition for public participation and collaboration.

Response: The Forest Service believes that the goal of collaborative public land management is best served by defining principles of public participation and collaboration; defining the plan components and planning activities that public participation and collaboration must address; and providing Responsible Officials with the discretion to tailor timing and methods to meet those mandates. The Forest Service believes that a uniform and consistent process is inappropriate for collaborative public land management because such a process is autocratic and therefore, is not collaborative. Such a process would not allow participants to help tailor the process to meet their needs and agency mandates. Yet, the directives establish that Responsible Officials, most often Forest Supervisors, must involve the public in specific planning activities; including, identifying whether any need to change the plan exists, developing plan components, designing of the plan monitoring program, and updating of comprehensive evaluations. At times, a series of public meetings may be appropriate. At other times, other methods will be appropriate. Evidence of responsiveness to the established principles should show the effectiveness of the timing and methods chosen by the Responsible Official. The Forest Service agrees that the term ''vision'' and the phrase ''strategy development'' were unclear and has removed those terms from the FSH 1909.12, chapter 30 regarding public participation and collaboration.

Keeping Interested Participants Involved

Comment: The directives on public participation and collaboration need clearer direction about how to keep interested participants involved and not disenfranchised.

Response: The Forest Service agrees that keeping interested participants engaged in the planning process is crucial to a successful plan. The Forest Service believes the principles established in FSH 1909.12, chapter 30, reaffirm keeping interested participants involved by building, earning, and maintaining the working relationships, trust, and collaborative capacity. The agency will work with partners to disseminate existing techniques for accomplishing this goal and will develop more materials as needed.

Separate Topics

Comment: Separation of the topics of public participation and collaboration is needed because public participation is mandated by law or regulation, while collaboration is not, and collaboration is a subset of public participation.

Response: The Forest Service must use a collaborative and participatory planning process to comply with NFMA and its implementing regulations in 36 CFR part 219. The Forest Service believes that collaborative activities are an important form of public participation during planning efforts and believes that collaborative activities extend beyond planning efforts. By treating these topics together, the Forest Service believes that better plans will result.

Consider Landowner Desires

Comment: The Forest Service should require Responsible Officials to consider landowner desires when setting up plan components because discretionary guidance is inconsistent with other references to collaboration.

Response: In agency direction, the verb ''should'' requires compliance except for justifiable reasons (FSM 1110). The Forest Service regulations require Responsible Officials to involve the public in developing plan components (36 CFR 219.9). The directives require Responsible Officials to strive to identify and notify potentially interested individuals, including landowners, and provide opportunities to engage in setting up plan components (FSM 1921.62). The directives also require Responsible Officials to involve the public in setting up plan components (FSH 1909.12, sec. 31.5). The Forest Service believes this direction requires consideration of landowner desires as part of the participatory and collaborative process of identifying desired social, ecological, and economic conditions.

Notification

Comment: The Forest Service should publish all plan amendments in the **Federal Register**.

Response: Public notification procedures for plan amendments are specified in the 2005 planning rule, 36 CFR 219.9(b)(2), and are not modified by the planning directives.

National Environmental Policy Act (NEPA)

Environmental Impact Statement (EIS)

Comment: The Forest Service should continue to do EISs including developing alternatives for planning.

Response: The Forest Service has 25 years of experience developing, amending, and revising plans under the requirements of NEPA. Based on that experience, and the recognition by the Supreme Court in *Ohio Forestry Ass'n* v. *Sierra Club* and *Norton* v. *Southern Utah Wilderness Alliance* about plans themselves, the Forest Service believes that land management plans, plan revisions, or plan amendments developed under the 2005 planning rule, and that do not approve projects or activities, do not individually or cumulatively result in significant effects on the human environment. For these reasons, the Forest Service believes that continuing the practice of developing EISs for plans is not needed.

Public Participation

Comment: Public participation opportunities should be provided consistent with the requirements of NEPA.

Response: The intent of the 2005 planning rule and the Forest Service directives is that public participation in the planning process be open and meaningful. The Forest Service believes that calling for frequent and collaborative public involvement in the planning process (FSM 1921.61, FSH 1909.12, sec. 30) will allow the views and values of the public to be better shown in plans than has historically occurred following the public involvement procedures specified by NEPA.

Cumulative Effects

Comment: Planning should give citizens information about the cumulative effects of various forest uses.

Response: The comprehensive evaluation report (CER) (FSM 1921.2, FSH 1090.12, sec. 24.2), while not considered a cumulative effects analysis, is intended to provide context for understanding the effects of various forest uses and activities. Because the CER is to be updated at least every 5 years its value in providing this context should be retained. Cumulative effects will be reviewed and disclosed during NEPA compliance at the project level.

Options Proposed by the Public

Comment: Forest Supervisors should be required to consider plan options that conservationists and others propose.

Response: Plan components, including options for plan components, are required to be developed with public input and input from other agencies (FSH 1909.12, sec. 25.32b).

Categorical Exclusion (CE)

Comment: The Forest Service should not categorically exclude (CE) plans from NEPA requirements or allow the exclusion of public participation in the planning process.

Response: Under the Council on Environmental Quality procedures for carrying out NEPA, categorical exclusion of a proposed action from documentation in an environmental impact statement (EIS) or environmental assessment (EA) is one way of complying with NEPA requirements (40 CFR 1500.4(p), 1501.4(a), 1508.4). The Council on Environmental Quality regulations specifically authorize Federal agencies (40 CFR 1507.3(b)) to identify classes of actions that normally do not call for either an EIS or an EA. The Forest Service believes that adoption of a plan falls into this class of actions because it does not result in specific on-the-ground action; and therefore, does not result in effects that can be analyzed (40 CFR 1508.23). The 2005 planning rule and Forest Service directives make open and meaningful public participation a central land management planning responsibility of the Responsible Official (FSH 1909.12, sec. 30). The Forest Service requested public comment on the proposal planning CE by notice in the **Federal Register** on January 5, 2005. The comment period closed on March 7, 2005.

Scientific Input

Comment: Amending and revising plans using CEs would unfairly and unwisely restrict scientists from providing important feedback to the government about natural resources.

Response: The public involvement processes under the 2005 planning rule and Forest Service directives are intended to involve all interested members of the public, along with other agencies, states and tribes.

Project Analysis

Comment: The Forest Service should clarify whether either an EIS or EA will be needed for each project.

Response: Any proposed action carrying out a plan developed under the 2005 planning rule (70 CFR part 1039) will be subject to Forest Service NEPA procedures at the time of the project decision, except in those rare instances when a project decision is made in a plan and that decision is supported by an EIS or EA assessment. Determination of the type of NEPA analysis and documentation will be made using Forest Service procedures found in FSM 1950 and FSH 1909.15 based on the characteristics of the individual actions proposed.

NEPA Compliance for Directives

Comment: The Forest Service should develop permanent planning directives through a process that complies with NEPA.

Response: The Forest Service directives have been developed in compliance with NEPA procedures. Forest Service NEPA procedures (FSH 1909.15, sec. 31.12, category 2), which were developed in consultation with the Council on Environmental Quality pursuant to Title 40, Code of Federal Regulations, Part 1507.3—Protection of the Environment, Council on Environmental Quality, Agency procedures, allow Service-wide policies to be categorically excluded from documentation in an EIS or EA. Developing Forest Service directives fits that category.

NEPA Handbook

Comment: The Forest Service should delete all references to NEPA in favor of directing planners to the NEPA handbook for the specifics of NEPA compliance.

Response: This change has been made in the final directives.

Adaptive Management Process

Comment: The Forest Service should clarify the stages at which the adaptive management process undergoes NEPA compliance.

Response: NEPA analysis occurs at the project level.

NEPA Application

Comment: The Forest Service should clarify whether FSM 1922 applies NEPA at the Forest planning level or the local project level for land management planning using planning regulations before November 9, 2000.

Response: Forest Service Manual 1926.04b clarifies that planning under the regulations in effect before November 9, 2000, calls for compliance with NEPA procedures found in FSH 1909.15. Forest Service Handbook 1909.15 identifies the NEPA requirements for project decisions.

Project EISs

Comment: The Forest Service should call for EISs for individual projects and not for land management plans.

Response: The intent of the 2005 planning rule and Forest Service directives is to use EISs for plans only when the plan decision includes projects otherwise needing an EIS. Individual projects will include NEPA documentation consistent with the requirements of FSH 1909.15. The documentation (EIS, EA, or CE) will depend on the specific proposal.

NEPA Compliance and Public Participation

Comment: The NFMA requires the Forest Service to meet NEPA requirements for public participation and that those requirements include an iterative process of developing alternatives, soliciting and responding to public comments, and consideration of proposals from non-agency sources.

Response: NFMA directs the Forest Service to specify procedures to ensure that the agency prepares land management plans in accordance with NEPA (16 U.S.C. 1604(g)(1)). NEPA directs the Forest Service and other Federal agencies to make environmental information available to the public before decisions occur and to encourage public involvement in decisions that affect the quality of the human environment. The directives set up procedures that ensure the agency prepares plans in accordance with NEPA, make information available to the public before decisions occur, and encourage public involvement in decisions and in implementing those decisions. The directives also maintain agency responsibility to consider and respond to public comments and to provide environmental information before decisions occur. And the directives set up the expectation that the planning process and the plans will be adaptive and, therefore, iterative so that the agency and the public work to develop plan components in a way that seeks continual improvement.

Objections

Objection Process

Comment: The Forest Service should ensure that objections made by the public are reviewed and that the reviewing officer responds point-by-point and accepts e-mailed objections.

Response: Requirements of the objection process have been moved from FSM 1926 to the FSH 1909.12, chapter 50. Although not requiring a ''point-by-point'' response, FSH 1909.12, section 51.31 calls for the Reviewing Official to ''provide a response on any remaining issues, including the basis of the response * * *'' This requirement ensures that objection issues are addressed by the Reviewing Official but does not require that the response be exhaustive to make prompt resolution of objections easier based on the requirements of the final rule. The final directives require acceptance of e-mailed objections (FSH 1909.12, sec. 51.13e).

Standing To Object

Comment: The Forest Service should make participation in the objection process open only to those parties that have provided prior written comment and limit the issues to those raised during the comment period.

Response: The objection process is established in Title 36, Code of Federal Regulations, part 219.13—and detailed in FSH 1909.12, chapter 50. Eligibility to file objections is based upon having participated in the planning process through submission of at least one written comment as an individual. A group may submit comments, but that does not establish eligibility for all members of that group. The final directives do not limit objections issues to those already submitted during prior comment opportunities. A proposed plan, amendment, or revision released for the objection period might provoke new responses from interested parties that have participated throughout the planning process. Limiting objection issues to past issues unnecessarily constrains opportunities for new ideas or fresh perspectives to be raised through objection that might improve the final plan.

Administrative Appeal

Comment: The Forest Service should provide provisions for administrative appeal or judicial review of objections in the Forest Service directives because any person, regardless of whether they submitted comments, has standing to file an objection or judicial review.

Response: The objection process under the planning rule and directives replaces an administrative appeals process previously set out at 36 CFR part 217. The directives do not address the availability of judicial review, which will be governed by generally applicable legal principles.

NEPA

Comment: The Forest Service should ensure that the objection process in the Forest Service directives is compliant with NEPA that actively and aggressively calls for public involvement, usually on a national scale.

Response: The new planning rule and directives provide extensive opportunity for public participation that exceeds requirement for public participation under NEPA. See the Preamble to the 2005 planning rule (70 FR 1034, Jan. 5, 2005) for more extensive discussion of the relation between the 2005 planning rule and NEPA.

Extensions

Comment: The Forest Service should allow extensions to the objection time period because a 30-day objection period is too short.

Response: The final directives retain the requirement of a 30-day objection period with no time extension. The final rule is clear in its intent to promote prompt resolution of objections through specific time frame requirements while fostering collaboration to resolve objection issues. Collaboration throughout the planning process is expected to keep the public participants in the process informed so that when a proposed plan, amendment, or revision is released for the objection period, 30 days would be enough to review and submit a timely objection.

Time Limit for Reviewing Officer

Comment: The Forest Service should provide a time limit for the Reviewing Officer to respond to an objection.

Response: No time limit is required in the final directives for the Reviewing Officer except to ''promptly render a written response to the objection'' (36 CFR 219.13(c)). Unlike the administrative appeals process, in which revised plans could go into effect after the record of decision was signed, but before plan appeals were decided, the Reviewing Officer and Responsible Official have an incentive to resolve objections promptly because the plan, amendment, or revision cannot be approved until objections are resolved.

Collaborative Process

Comment: The Forest Service should keep the objection process separate from the collaborative process.

Response: The final rule and directives require that parties to the objection must have submitted written comments before the objection period (36 CFR 219.13(a)). A collaborative effort to resolve objection issues is encouraged.

Mandatory Conflict Resolution

Comment: The Forest Service should make collaboration mandatory for resolving conflicts during the objection

process and clarify how it will be carried out.

Response: The objection process is mandatory before approval of all proposed plans, amendments, and revisions (36 CFR 219.13(a)). Collaboration may be used to resolve objection issues through an effort between the Reviewing Officer, the Responsible Official, and the objector(s). The means of resolving objections is left to the Reviewing Officer to decide (FSH 1909.12, sec. 50.47)).

Social, Ecological, and Economic Sustainability

General Concerns

Sustainability

Comment: The Forest Service should focus on conservation and restoration of ecosystem diversity and provide standards in the directives so that the Responsible Official will include meaningful provisions for sustainability in the plan.

Response: Explanation of the goal of ecological sustainability is provided in FSM 1921.73. Although that section does not provide strict standards for ecological sustainability, it does provide the Responsible Official enough direction to establish a framework that will make appropriate contributions to ecological sustainability. Specific provisions in the plan will be found during plan development with public involvement.

Sustainability

Comment: The Forest Service should add a section to the Forest Service directives that explains how to blend the three parts of sustainability together rather than focusing solely on the ecological aspects of sustainability.

Response: Plans must combine the parts of sustainability because social and economic conditions affect, and are affected by, ecological conditions, and also ecological conditions affect, and are affected by, social and economic conditions. Plans are also required to set up plan components, especially desired conditions, in response to connections among the Forest and social, economic, and ecological systems. Integrating these three facets of the environment is a new and challenging task for Forest Service land management planning. The manner of integration is, in the first instance, left to the discretion of the Responsible Officer. Placing more specific direction in the Forest Service directives is inappropriate at this time. Specific recommendations about how to carry out integration employing best available science will be found on the TIPS (Technical Information for Planning Site at *http://www.fs.fed.us/TIPS*) as forests gain knowledge and experience about how to do the integration.

Sustainability

Comment: The Forest Service should base its assessment of sustainability on properly functioning, ecological conditions and not social or economic conditions.

Response: The Forest Service believes sustainability results from the interaction of social, economic, and ecological conditions. The assessment of ecological sustainability is based on the range of variation wherever adequate information is available. This approach is widely recognized in scientific literature. Proper functioning condition (PFC) is an assessment tool that was developed for riparian systems. Although PFC has seen some application to broader forest communities, there is stronger scientific support for use of the range of variation.

Evaluating the Elements of Sustainability

Comment: Productivity is conspicuously missing from the evaluation criteria.

Response: Forest Service Handbook 1909.12, section 43.26 refers to the provision of ''ecological conditions'' for species. In the 2005 planning rule, ''ecological conditions'' are defined as ''components of the biological and physical environment that can affect diversity of plant and animal communities and the *productive capacity* of ecological systems'' (emphasis added). Also, one of the characteristics of ecosystem diversity listed in FSH 1909.12, section 43.12 is basic soil productivity.

Properly Functioning Ecological Condition

Comment: All forest units should be maintained in a properly functioning ecological condition to provide a gauge when uses being applied to the unit are not sustainable. This should be assessed by comparing exploited forest units to ''control'' units.

Response: Using the range of variability as context for sustainability has considerable scientific support. ''Control'' units are introduced in FSH 1909.12, section 43.13 using the term ''reference areas''.

Sustainability Monitoring

Comment: Chapter 40 provides guidance for socioeconomic monitoring, but no guidance for ecological sustainability monitoring. The Forest Service should consider providing more specific guidance for ecological sustainability monitoring into its handbook.

Response: Guidance for monitoring of sustainability is provided in FSH 1909.12, section 12.

Ecosystem Diversity Characteristics

Comment: The Forest Service should revise its list of ecosystem diversity characteristics in chapter 40 of its handbook because the current list is too prescriptive.

Response: The characteristics displayed in FSH 1909.12, section 43.12, exhibit 01 are clearly labeled as examples and not characteristics for which analysis is required. Therefore, the list isn't prescriptive and will serve as an aid to help find those characteristics that are appropriate for a given local situation.

Risk Assessment

Comment: Expand chapter 40 to include the risk assessment process to determine the long-term impacts of untreated forest fuel conditions on social, economic, and ecological sustainability.

Response: Forest Service Handbook 1909.12, section 43.14a provides guidance for use of a risk assessment process for all characteristics of ecosystem diversity including those that would be impacted by forest fuels.

Diversity of Plant and Animal Communities

Comment: Directives should ensure that national forests provide a diversity of plant and animal communities by making the ecological sustainability provisions mandatory.

Response: Forest Service Handbook 1909.12, section 43.1 directs that the assessment of ecosystem diversity ''inform * * * the development of plan components through the establishment of desired conditions, objectives, guidelines, and suitability determinations.'' The Responsible Official has to show that the plan developed in accordance with these objectives satisfies the NFMA requirement to provide for a diversity of plant and animal communities.

Trend Analysis

Comment: The Forest Service should require forest planners to conduct trend analyses that evaluate the social, economic, and ecological impacts from the lack of actions on forest vegetation, the risk of catastrophic wildfires, soil movement, and the impact of these and related ecological factors on the local communities.

Response: While the directives do not explicitly direct examination of trends

from lack of action, direction added in several places suggests this examination. In FSH 1909.12, section 43.1 the Responsible Official is directed to compare natural variation of ecosystem characteristics to projected future conditions. Forest Service Handbook 1909.12, section 43.14 calls for the development information about current conditions of the selected ecosystem diversity characteristics, and projecting future trends of those characteristics under existing plan guidance. These projected future conditions cannot be interpreted to be limited to lands getting management activities. For social and economic trends, FSH 1909.12, section 42.21 directs the Responsible Official to evaluate changing conditions that may affect relevant economic indicators and social systems. Changing conditions are subject to this evaluation, whether the result of activity or lack of activity.

Comment: The Forest Service should acknowledge that the Service directives give Responsible Officials conflicting guidance about trend analysis. The directives say that trend analysis is at the discretion of the Responsible Official but then gives duties.

Response: The directives have been changed in several places to clarify the requirements for trend analysis (FSH 1909.12, sec. 24.23). Forest Service Handbook 1909.12, section 43.1 and FSH 1909.12, section 43.14 direct the Responsible Official to look at trends in ecological conditions. Forest Service Handbook 1909.12, section 42.21 gives guidance on evaluating trends that effect social and economic sustainability. The details of methods of evaluation are left to the Responsible Official's discretion.

Range of Variation

Comment: The Forest Service should caution against using range of variation to justify management toward typical system equilibrium; disclimaxes, disturbance states, or a prevalence of early successional stages to increase short-term yield.

Response: The directives are clear that the intent of evaluating ecosystem diversity is to ''determine possible risks to the sustainability of ecosystem diversity over time, determine the potential contribution of National Forest System (NFS) lands to ecosystem diversity of the larger landscape, and determine needed change'' (FSM 1921.73a). The directives also caution that ''there may be ecological, social, or economic reasons for identifying desired conditions that are outside the range of variation and the range of desired conditions may be narrower than the range of variation'' (FSH 1909.12, sec. 43.13). The directives stipulate that ''The range of variation for an ecosystem characteristic is most comprehensively described by a frequency distribution for conditions experienced by that characteristic over time, including the areal extent of those conditions'' (FSH 1909.12, sec. 43.13). The directives note that ''In general, the likelihood of negative outcomes is greater for those ecosystem characteristics whose condition show greater departure from the range of variation'' (FSH 1909.12, sec. 43.14a) and finally stipulate that the Responsible Official should ''describe the ecological reason for the plan components based on evaluating ecosystem diversity'' (FSH 1909.12, sec. 43.14a).

In summary, the directives provide guidance to the Responsible Official to: (1) Consider the range of variation on NFS lands in the larger landscape; (2) consider the full range of variation and the frequency with which various conditions occurred; (3) consider all facets of ecological, economic, and social sustainability, and not just range of variation, when setting up desired conditions; (4) estimate risk resulting from departure from range of variation; and (5) show the ecological reason for plan components. Use of range of variation information to simply justify maximum timber yields would not be consistent with this direction.

Economic Considerations

Fire Condition Class

Comment: The Forest Service should note fire condition class information in assessing current conditions as called for in section 43.14 of its handbook. Forest planners should evaluate the social, economic, and ecological implications of current forest fuel conditions because they create future risks to air quality and the quality and quantity of forage and water.

Response: Forest fuel condition is one of many forest conditions that planners may evaluate for their contribution to or potential risk to sustainability. Fire Regime Condition Class information was added to exhibit 01 of FSH 1909.12, section 43.12. On forests where risks from fuel conditions are significant, they will be addressed in the planning process.

Historic Range of Variation

Comment: The Forest Service should drop the references to, and analysis of, historic range of variation in the guidance documents and create a process that truly balances social, economic, and ecological sustainability goals because using historic range of variation as a benchmark or guideline will preclude balancing environmental goals with social and economic goals.

Response: Using the range of variability as a context for setting up plan components is not inconsistent with reaching an appropriate balance of social, economic, and ecological sustainability. The directives are careful to stipulate that range of variability should be used as a context for evaluating current and desired conditions, but do not always become desired conditions themselves. The directives further acknowledge that there may be ecological, social, and economic reasons for setting up desired conditions that are outside the range of variability and that it may be impossible in many cases to recreate the range of variability.

Social and Economic Elements

Comment: The ecological section is very prescriptive in the type and source of information planners can use while the social and economic elements are much more generic directing the planners to use ''best available information.''

Response: The difference in detail between the social and economic sustainability section and the ecological sustainability section can be traced to a difference in wording employed by the final rule. While it is the goal of the plan to contribute to the sustainability of social and economic systems in a general sense, the plan must provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area (70 FR 1059, Jan. 5, 2005). This creates a greater responsibility for addressing ecological sustainability in the land management planning process and requires more detailed guidance in the directives.

Social and Economic Sustainability

Comment: The Forest Service should acknowledge that it is not the purpose of the NFS or Federal lands to guarantee economic and social sustainability or economic gain to businesses and local economies.

Response: Plans are not required to guarantee social and economic sustainability, but rather are required to contribute to social and economic systems. There is clear recognition in the rule and directives that social and economic sustainability cannot stand on its own and is inextricably linked to ecologic sustainability. The Multiple-Use Sustained Yield Act (MUSYA) authorizes and directs the Secretary to

develop and administer the resources for multiple-use and the sustained yield of the several products and services that are obtained from management of the surface resources. The Forest Service views sustainability under the proposed and final rule as a single objective with interrelated and interdependent social, economic, and ecological elements. This concept of sustainability is linked closely to MUSYA in that economic and social elements are treated as interrelated and interdependent with ecological elements of sustainability.

Budgets

Comment: The Forest Service should remove the many references throughout the Forest Service directives that constrain the planning process based on anticipated budgets because plans should be aspirational and unconstrained by financial considerations when addressing desired future conditions.

Response: Forest Service Handbook 1909.12, section 11 states that plan objectives should be based on budgets and other assumptions that are realistic expectations for the next 15 years. The same section also states that the Responsible Official is responsible for adapting the plan to respond to changing situations and for developing budgets and projects that implement the plan's components. The Forest Service believes these guidelines represent a reasonable and prudent approach when developing a plan that can be implemented. The comprehensive evaluations, required every 5 years, will allow for reconsidering the effects of budget constraints on plan implementation. Contributions to the sustainability of social, economic, and ecological systems are limited by agency authorities, budget, and the capability of the plan area (36 CFR 219.10).

Ecosystem Health

Comment: The Forest Service should not give economic considerations the same weight as ecosystem health because sustained productivity requires a functioning ecosystem.

Response: The final rule and directives recognize that economic, social, and ecological sustainability are interrelated and that a plan must integrate the elements of sustainability. Any relative weighting is done during the collaborative process of developing desired conditions.

Forest Level Assessment

Comment: The Forest Service should consider creating a national forest level assessment of the agency's capability to annually and cumulatively meet the goals of each plan as part of the budget preparation and review process.

Response: During the collaborative process, it is anticipated that this type of information will be shared and weighed by all interested parties, though no specific direction for this is offered in the directives. The final rule states that contributions to the sustainability of social, economic, and ecological systems are limited by agency authorities, budget, and the capability of the plan area (36 CFR 219.10).

Disclose Financial Expenditures

Comment: The Forest Service should disclose all financial expenditures to the general public.

Response: This information is available in the annual ''Forest Service Performance and Accountability Report'' which can be viewed at *http://www.fs.fed.us.gov/publications.*

Cumulative Economic Impacts

Comment: The Forest Service should include the cumulative economic impacts in every forest planning document, including a three-year cumulative impact study.

Response: In the past, job and income effects have not often been expressed in terms of cumulative impacts over time. Increased public participation and collaboration should produce plans that provide interested parties with more of the information they require. Cumulative effects analysis will be done during project level NEPA analysis, as appropriate. These issues are also addressed during the development of the Allotment Management Plan for each range allotment on NFS units.

Role of Timber

Comment: The Forest Service should acknowledge in the Forest Service directives the potential role of timber in contributing to economic and social sustainability.

Response: Forest Service Handbook 1909.12, chapter 60 requires the Responsible Official to take into account all elements of sustainability (social, economic, and ecological) and follow the public participation process for plan development, plan amendment, or plan revision to involve the public in this analysis of timber harvesting. During this part of the planning process, the contribution of timber harvest and production will be considered when appropriate (FSH 1909.12, ch. 60).

Contributing to Sustainability

Comment: The Forest Service should expand the Forest Service directives to include a section on how to contribute to social and economic sustainability similar to the instruction on contributing to ecological sustainability.

Response: In FSH 1909.12, section 42.21, ''Evaluation Guidelines'' states for economic systems, consider opportunities to, such as employment, income, capital, housing, and fiscal health for important economic units. These economic units may include the contribution of payments to states and local governments.

Business Management Evaluation

Comment: The Forest Service should require a business management evaluation as part of the sustainability evaluation, which carefully reviews costs and revenues and how these factors can be changed and improved. Forest planners should identify all the revenues generated from a national forest, the source of those revenues, and how those revenues are expected to change over time as part of the economic review.

Response: Discretion is left to the Responsible Official to decide how detailed the evaluation needs to be. The rigor of analysis used in assessing social, economic, and ecological systems should be proportional to the level of risk to those systems and to the degree to which past, present, and projected conditions in the plan area contribute to that risk. A business analysis could be an important part of this assessment if deemed appropriate by the Responsible Official.

Cost Increase

Comment: The Forest Service should acknowledge that under the new planning system the costs will increase perhaps 80–90 percent because of the contraction of forest planning and the increased responsibility for project planning.

Response: Before the 2005 planning rule was released, the Forest Service did a benefit/cost analysis that showed that the cost of the new rule is expected to be similar to that of the 1982 planning rule. Experience with applying the 2005 planning rule will give more information on relative costs.

Economic and Social Costs

Comment: The Forest Service should acknowledge that the economic and social costs of forest planning are borne by the people at the state and local level.

Response: The 2005 planning rule addresses this problem by requiring that social and economic sustainability are taken into account as well as basing the planning process on collaboration. Further direction is provided in the Forest Service directives (FSH 1919.12,

sec. 42). Local constituencies will have an important opportunity to have their voices and concerns heard throughout the planning process.

Economic Impact of Timber Sales

Comment: The Forest Service should consider the economic impact that timber sales have on the state of Michigan's economic well-being.

Response: This is exactly the type of local concern that is addressed through collaboration. As part of planning process, the Responsible Official is required to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. For example, collaboration is used to describe distinctive roles and contributions that the planning unit has to the ecological system and the human community.

Domestic Livestock

Comment: The Forest Service should be required to produce accurate data on domestic livestock management to document the need for change. There should be a built-in allowance for the increase in animal units when monitoring to show that range.

Response: The monitoring strategy for a plan is developed collaboratively: ''As part of planning process, the Responsible Official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program'' (36 CFR 219.9(a)). Therefore, if the Forest Service proposes a project to develop an inventoried roadless area, the environmental analysis must look at whether to develop the area or not, not just alternative ways of developing the area.

Species Protection

Species

Comment: The Forest Service should admit that there is a drastic decline in the strength of regulations for species protection, including the removal of the viability requirement. There should be more protection for rare species, regionally sensitive species, species-of-conservation-concern in State Comprehensive Wildlife Strategies, and species listed as threatened and endangered by states. Restrictive criteria for identifying species-of-concern and relying on ecosystem provisions to provide for species and species diversity should be removed. Requirements for enhancement of fish populations, increasing protection provisions, increasing the number of species identified for protection, monitoring populations, and broadening current species protection provisions to prevent decline of species making them eligible for endangered species listing should be included in the directives.

Response: The 2005 planning rule and directives are explicitly designed to provide for ecological sustainability through the combination of ecosystem diversity and species diversity approaches. The new rule addresses a much broader range of species than the 1982 planning rule; plant species, invertebrates and lichens are included besides vertebrates. Species-of-concern will be identified based on NatureServe rankings, but identifying species-of-interest will consider many sources including those listed by states as threatened or endangered and those identified in state comprehensive plans as species of conservation concern. The primary purpose for identifying species-of-concern is to put in place provisions that will contribute to keeping those species from being listed as threatened or endangered. The combined criteria for species-of-concern and species-of-interest should lead to identification of all species for which there are legitimate conservation concerns. Particularly, criterion five for species-of-interest (FSH 1909.12, sec. 43.22c), which directs identifying ''additional species that valid, existing information indicates are of regional or local conservation concern due to factors that may include significant threats to populations or habitat, declining trends in populations or habitat, rarity, or restricted ranges.'' Species for which there are no conservation concerns should be adequately conserved through the ecosystem diversity approach.

The directives are not as prescriptive as the viability requirement was, but under the 2005 planning rule and directives, the enhancement of conditions for fish and wildlife populations is the expected outcome of new plans.

Populations

Comment: The Forest Service should collect data about species populations and trend data for at least some species-of-concern, species-of-interest and other species because implementing plan components for species diversity described in FSH 1909.12, section 43.25, will need information about the populations, trends, and distributions of certain species. These species should be monitored over the life of the plan or until they are no longer of concern or interest to assess whether plan components conserve species.

Response: The 2005 planning rule and directives do not anticipate gathering population data for developing a plan. Nor do they specify the types of data that will be needed for implementation of plans or contain prescriptive requirements for monitoring on any resource. It is possible that more data on populations of some species may be needed during plan implementation. The types and amount of data needed will be determined by the Responsible Official taking into account best available science.

The rule and directives require that monitoring questions be articulated revolving primarily around desired conditions and the degree to which they are being achieved. Priority will be given to monitoring questions that address desired conditions for which there is ''a high degree of uncertainty associated with management assumptions'' (FSH 1909.12, sec. 12.1). Species populations may be identified for monitoring through this process.

Species Diversity

Comment: The Forest Service should clarify the intent of the Forest Service directives' species diversity sections to show the direction provided in the regulations and focus on biological diversity at the landscape and ecosystem level. There are several sections in the handbook and manual that suggests that the past approach of providing for individual species remains.

Response: The 2005 planning rule sets up the requirement that Responsible Officials provide for diversity of plant and animal communities using an approach that addresses ecosystem diversity and species diversity (36 CFR 219.10). The rule stipulates that the species diversity approach is to be used when the components set up through ecosystem diversity need to be supplemented to provide appropriate ecological conditions for listed species, species-of-concern, and species-of-interest. The provisions in the directives are a direct reflection of this approach to providing for diversity of plant and animal communities.

Diversity of Plant and Animal Communities

Comment: The Forest Service should make its handbook consistent with the law by aligning provisions to focus on diversity of plant and animal communities rather than species diversity.

Response: Forest Service Handbook 1909.12, section 61 has been re-drafted to address vegetation management requirements at the project level. The

role of land management planning and sustainability is addressed in FSH 1909.12, chapter 40. The planning rule lists two criteria for sustaining ecological systems; ecosystem diversity and species diversity. These criteria are consistent with the requirements of NFMA.

Sustainability

Comment: The Forest Service should include various discussions in section 61.7 of the Forest Service directives to provide a sustainable and functioning ecological condition.

Response: Forest Service Handbook 1909.12, section 61 has been revised to address vegetation management requirements at the project level. The role of land management planning and sustainability is addressed in FSH 1909.12, chapter 40.

Species Viability

Comment: The Forest Service should not repeal the NFMA's species viability requirement because the viability requirement provides a way to accurately assess species population numbers and will prevent species from being listed as endangered species. One respondent thought it was unclear whether the viable population standard, as it exists now, would be included in the desired conditions component using the new rule.

Response: The viability standard will no longer be used. But, the directives require that national forests and grasslands continue to: (1) Identify listed species, species-of-concern, and species-of-interest; (2) collect available data and information for the species including population data; (3) develop management direction for the species; and (4) assess the effects of management direction. Elimination of the viability requirement was a decision made with publication of the 2005 planning rule. The directives reflect that decision. The following points were made about the viability provision when the rule was published:

''The species viability requirement was not adopted for several reasons. First, the Forest Service's experience under the 1982 planning rule has been that ensuring species viability is not always possible. For example, viability of some species on NFS lands may not be achievable because of species specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), or when the reasons for species decline are caused by factors outside the control of the agency (such as habitat change in South America causing decline of some Neotropical birds), or when the land lacks the capability to support species (such as a drought affecting fish habitat). Second, the number of recognized species present on the units of the NFS is very large. It is clearly impractical to analyze all species and past attempts to analyze the full suite of species by way of groups, surrogates, and representatives have had mixed success in practice. Third, focus on the viability requirement has often diverted attention and resources away from an ecosystem approach to land management that, in the Department's view, is the most efficient and effective way to manage for the broadest range of species with the few resources available for the task.''

Populations

Comment: The Forest Service should include enforceable requirements in the Forest Service directives to analyze and monitor wildlife populations and health of species with determinations on trends. Nowhere in the directives, is there a requirement to monitor populations of species.

Response: The 2005 planning rule and resulting directives do not contain prescriptive requirements for monitoring of any resource. Rather they require that monitoring questions be addressed in the context of desired conditions and the degree to which they are being achieved. Priority will be given to monitoring questions that address desired conditions for which there is ''a high degree of uncertainty associated with management assumptions'' (FSH 1909.12, sec. 12.1). Species populations may be identified for monitoring through this process.

Management Indicator Species (MIS)

Comment: The Forest Service should continue to use MIS as a tool for evaluating the effects of land management activities because analysis of habitat and individual species data are needed to maintain species diversity.

Response: The concept of MIS was not included in the 2005 planning rule, except for transition provisions at 36 CFR 219.14, because recent scientific evidence identified flaws in the MIS concept. The concept of MIS was that population trends for certain species that were monitored could represent trends for other species. Through time, this was found not to be the case.

Genetic Diversity

Comment: The Forest Service should conserve genetic diversity at the population level with decisions being made at the individual national forest level.

Response: It is the intent that decisions about species conservation under NFMA will be made on individual national forests and will address genetic diversity when needed.

Habitat Viability

Comment: The Forest Service should not adopt habitat viability as its framework to protect biodiversity under NFMA because determining the population viability of individual species calls for data on the population's status.

Response: Forest Service Handbook 1909.12, section 43.26 requires that the connection between habitat conditions and species consequences be assessed as part of evaluating the effects of plan components on species. This assessment would be based on existing information. Also, FSH 1909.12, section 43.23 calls for identifying critical information that is essential to management for species diversity and is currently lacking. Collection of that information should become a high priority of monitoring programs.

Wildlife Corridors

Comment: The Forest Service should have a broader ecological plan focusing on connectivity and wildlife corridors.

Response: Forest Service Handbook 1909.12, section 43.25 describes plan components for species diversity that would address the whole range of issues associated with species conservation including habitat connectivity.

State Strategies

Comment: The Forest Service should include specific language in the manual and handbook encouraging consultation with State Comprehensive Wildlife Conservation Strategies to reduce potentially duplicative planning efforts.

Response: Forest Service Handbook 1909.12, section 43.22c directs that species identified as conservation concerns in the State Comprehensive Wildlife Strategies be considered for identification as species-of-interest. Directions to consult would not be appropriate because the timing of Forest Service and state planning efforts are not likely to coincide; however, we do direct the Responsible Official to take into account State Comprehensive Wildlife Strategies and we encourage the Responsible Official to participate in ongoing planning efforts where NFS lands are found (FSH 1909.12, ch. 30).

Altered Systems

Comment: In FSH 1909.12, section 43.1 it states ''where systems are highly altered, a species conservation plan focus may be more appropriate.'' We are concerned that some would argue or litigate that the entire NFS is highly altered and therefore the entire NFS should be subjected to a species conservation plan focus.

Response: This section has been rewritten and the example cited in this comment is no longer present.

Previous Rule No Longer Applies

Comment: The Forest Service should clarify provisions in its handbook to better focus on biological diversity at the landscape and ecosystem level and reinstate language from the September 29, 2004, ''Interpretative Rule'' explaining the meaning of the ''Use of Best Available Science in Implementing Land Management Plans'' to make it clear that the 1982 and 2000 planning rules no longer apply to projects. Some people have insisted that the 1982 planning rule required population counts before approving projects and activities.

Response: The Forest Service has clarified provisions for ecosystem diversity and species diversity in FSH 1909.12. The Forest Service does not need to reinstate the Interpretative Rule. The previous planning regulations are no longer in effect. However, the 2005 planning rule allows Responsible Officials to continue to use the provisions of the planning regulations in effect before November 9, 2000, to develop, amend, or revise land management plans in specific cases (36 CFR 219.14). The 2005 planning rule explicitly states, ''site-specific monitoring or surveying of a proposed project or activity area is not required'' (36 CFR 219.14(f)).

Endangered Species Act (ESA)

Comment: The Forest Service should clearly state in the Forest Service directives the Endangered Species Act-related requirements for forest planners or delete these references because provisions constraining forest planning to advance conserving of species is unlawfully limiting the agency's discretion to manage for multiple uses.

Response: Forest Service Handbook 1909.12 does not increase the habitat values for the conservation, recovery, or improvement of listed species, or increase the benefits for ESA listed species. Direction in the handbook will allow the Forest Service to contribute to reaching the purposes and requirements of the ESA and NFMA for species and ecosystem conservation, while also contributing to society's demand for other resources.

Species-Specific Management

Comment: The Forest Service should amend the directives to clearly state that species-specific management should be tried only when the maintenance or creation of that species' habitat is defined as a desired condition consistent with multiple-use objectives and identified desired future conditions.

Response: Forest Service Manual 1921.73 states that species-specific direction will be developed only when needed to supplement direction for ecosystem diversity to provide appropriate ecological conditions for listed species, species-of-concern, and species-of-interest. This intent is reiterated in FSH 1909.12, section 43.21. Forest Service Handbook 1909.12, sections 43.22b and 43.22c set up that species-of-concern are identified because management actions may be needed to prevent listing under the ESA. Species-of-interest are identified because the Responsible Official finds that management actions are needed to reach ecological or other multiple-use objectives. This clearly satisfies the concern that species specific direction will only be established when needed to reach desired conditions. Forest Service Handbook 1909.12, section 43.25 further sets up that plan components developed for species diversity will be consistent with the limits of agency authorities, the capability of the plan area, and multiple-use objectives.

Late Successional Habitats

Comment: The Forest Service should give priority to late successional forests. In the Eastern United States, much of the landscape is in private ownership and because of land-use patterns; much of the private land is in an early- to mid-successional stage. But Public lands in the Eastern United States offer a chance to promote late successional habitats and species.

Response: Evaluations of ecological sustainability are intended to consider national forests and grasslands in relation to other lands. Forest Service Manual 1921.73a directs the Responsible Official to use evaluations to determine the potential contribution of national forests and grasslands to ecosystem diversity of the larger landscape. Forest Service Handbook 1909.12, section 43.11 sets up that the area of analysis for ecosystem diversity will generally include non-National Forest System lands to consider broad-scale conditions and trends. These national directives do not set up which components of ecosystem diversity will be stressed in the plans of a particular region relying instead on the unit-specific analysis to help determine that emphasis.

Self-Sustaining Populations

Comment: The Forest Service should clarify the Forest Service's directives' approach to conserving species-of-concern because the phrase ''contributing to'' self-sustaining populations is vague and indirect.

Response: The agency uses the phrase ''contribute'' recognizing that NFS lands may not be enough to maintain self-sustaining populations of those species that are distributed across lands of many ownerships.

Criteria for Species-of-Concern

Comment: Clarify the criteria for recognizing species-of-concern to clearly state that evidence must exist (either scientific reports or expert opinion) that the species will continue to decline under the plan.

Response: Species-of-concern will be identified using explicit criteria about their ranking on NatureServe and their listing status under the Endangered Species Act. Once identified, these species will be screened to see if they need further consideration in the planning process. They may be dropped from further consideration if they are considered secure in the plan area, are not affected by management, or there is too little information about them to complete a credible assessment.

Identifying Species

Comment: The Forest Service should direct forest planners to identify species-of concern and species-of-interest based on the best available scientific information because a lack of information should not be a justification for listing a species-of-interest or species-of-concern. The directives should provide greater discretion to agency decision makers and limit species-specific action.

Response: The Responsible Official must take into account best available science throughout the planning process. Also, FSH 1909.12, section 43.22d states that only species for which there is adequate knowledge to complete a credible assessment will be carried forward in the planning process.

Increase Conservation of Species

Comment: The Forest Service should clearly state that plans do not need to include provisions that increase conserving of species-of-concern and species-of-interest.

Response: No such caveat is needed because there is nothing in the directives that suggests that conservation will be increased.

Sensitive Species

Comment: The Forest Service should clarify how species-of-concern and species-of-interest encompass or do not encompass sensitive species because all of the species that the Regional Foresters designate as sensitive in their

respective regions must be considered in planning for the affected forests.

Response: The criteria for species-of-concern and species-of-interest are listed in FSH 1909.12, section 43.22. The wildlife directives governing the identification of sensitive species are subject to change because they were based on the viability requirement from the 1982 planning rule. Since those directives may now change, they are not cited in the Forest Service directives. However, the criteria for species-of-concern or species-of-interest are similar to the criteria generally used for developing the existing regional lists of sensitive species.

Criteria for Listing

Comment: The Forest Service should consider adding more criteria for listing species-of-interest because forest planners will find many common species that are ranked S1 or S2 on NatureServe or are listed as threatened or endangered by the states.

Response: Forest Service Handbook 1909.12, section 43.22c recognizes that species ranked S1 and S2 and state-listed species may not be of concern in a particular plan area and so suggests additional criteria that should be applied before species are identified as species-of-interest.

State-Listed Species

Comment: The Forest Service should consider listing species that meet the criteria for species-of-interest as species-of-concern instead to ensure the continued existence of important ecosystem components such as native plant and wildlife species. The Forest Service should treat state-listed species in a similar fashion to federally listed species in the Forest Service directives.

Response: In general, species that require the highest levels of conservation attention are those that meet the criteria for species-of-concern. The directives recognize that other species, those fitting the criteria for species-of-interest, may also require specific management considerations. Identification of species-of-concern and species-of interest is only the first step in determining what plan components will be developed for species. Through the processes of information collection, evaluation of species status including risk factors, and evaluation of plan components, the Responsible Official will determine appropriate contributions of the national forest or grassland to ecological conditions needed to meet objectives for the species. If plan components are needed on the national forest or grassland to avoid the need to list species, they will be identified through this process regardless of the initial identification of a species as being of concern or of interest.

Endangered Species

Comment: The Forest Service should ensure that endangered species, species-of-concern, and species-of-interest are sufficiently protected. In addition, all species that might be listed as endangered or threatened should be identified as species-of-concern in order to avoid the need to list them. Additionally, the genetic viability of species should be protected in order to maintain biodiversity.

Response: Through the processes of identifying species-of-concern and species-of-interest information collection, evaluation of species status including risk factors, and evaluation of plan components, the Responsible Official will determine appropriate contributions of the national forest or grassland to ecological conditions needed to meet objectives for the species, including genetic viability, as appropriate. If plan components are needed on the national forest or grassland to avoid the need to list species, they will be identified through this process.

Ecological Community

Comment: The Forest Service should base species diversity on the overall composition and diversity of species within an ecological community rather than basing it predominately on single species management approaches revolving around specially identified species.

Response: The hierarchical approach using ecosystem diversity and species diversity is intended to provide for the overall composition and diversity of species. Plan components established for ecosystem diversity should provide for populations of the majority of species. The species diversity approach then provides a check for those species for which additional plan components may be needed.

Population Data

Comment: The Forest Service should obtain population and trend data for at least some species-of-concern, species-of-interest, and other species. These species should be monitored over the life of the plan or until they are no longer of concern or interest to assess whether plan components conserve species.

Response: The 2005 planning rule and directives do not contain prescriptive requirements for monitoring of any resource. Rather, they require that monitoring questions be addressed through desired conditions and the degree to which they are being achieved. Priority will be given to monitoring questions that address desired conditions for which there is ''a high degree of uncertainty associated with management assumptions'' (FSH 1909.12, sec. 12.1). Species populations may be identified for monitoring through this process.

Non-Discretionary Wording

Comment: The Forest Service should make the consideration of endangered species, species-of-concern, and species-of-interest non-discretionary.

Response: While there is some discretion in the wording for species diversity in the directives, the following steps are generally required: (1) Identify listed species, species-of-concern and species-of-interest; (2) collect available data and information for the species including an assessment of risk factors; (3) develop plan components for the species as necessary; and (4) assess the potential outcomes of plan components. These steps, combined with the ecosystem diversity approach, should provide for significant consideration of species that require conservation attention.

Enforceable Standards

Comment: The Forest Service should provide enforceable standards and use more than one data source when determining which species to protect. Without enforceable standards, there is no way for the public or other branches of the government to hold the Forest Service accountable for protecting species and their habitats.

Response: The Forest Service is accountable for federally-listed species under the Endangered Species Act and accountable for diversity of plant and animal species under the provisions of NFMA. That accountability is not changed by the directives.

While there is some dependence on NatureServe for identifying species-of-concern and species-of-interest, numerous other sources are listed in the directives including State Comprehensive Wildlife Strategies, the U.S. Fish and Wildlife Service Birds of Conservation Concern Priority List, state lists of threatened and endangered species, and other sources of valid information indicating significant threats to a species population or habitat.

Federally Listed Species

Comment: The Forest Service should require Responsible Officials to contribute to conserving federally listed

species so as not to present a possible conflict with the Endangered Species Act, section 7(a)(1).

Response: Forest Service Manual 1921.76c states that ''plan components for federally-listed species must comply with requirements and procedures of the Endangered Species Act and should, as appropriate, implement approved recovery plans and/or address threats identified in listing decisions.''

Surrogate Species

Comment: The Forest Service should clearly identify the criteria for identifying surrogate species in section 43.24 of its handbook and how this tool is to be used in the forest planning process because if workable guidelines for forest planners cannot be developed, then this section should be deleted.

Response: As with any other approach used in NFMA planning, species grouping and the selection of surrogates must take into account the best available science and applicable portions of the Data Quality Act (44 U.S.C. 3516). An approach that does not satisfy these criteria would not be used.

Risk Levels

Comment: The Forest Service should clarify how Responsible Officials will determine that information is valid and sufficient to indicate risk levels to species.

Response: Determinations of Responsible Officials will consider best available science and meet applicable Data Quality Act (44 U.S.C. 3516) standards regarding public acknowledgement of known data quality. Responsible Officials will take into account best available science and known risk levels when indicating risk levels to species (FSH 1909.12, sec. 41).

NatureServe

Comment: The Forest Service should not rely on NatureServe as the sole source for species-of-concern designations. Concerns about NatureServe related to: (1) Frequency with which the ratings are updated; (2) public access to the data used in determining the rankings; (3) consistency of ranking across states; (4) use of only global rankings instead of global and national rankings to determine species-of-concern; and (5) failure of NatureServe to recognize some taxonomic units that could be listable.

Response: The intent of the directives is to provide an independent and objective means of prioritizing species for conservation. The most comprehensive source of this information is the network of state natural heritage programs that make up the NatureServe network.

Although it is the best source of data available, the NatureServe ranking system is not perfect. Imperfections in the NatureServe database were one of the reasons for establishing the species-of-interest category. Species that are not ranked or are locally rare (rather than globally rare) may be identified as species-of-interest, resulting in the establishment of appropriate plan components. Species and other taxonomic units that are listed and proposed under the Endangered Species Act will be identified for establishment of appropriate plan components regardless of their NatureServe ranking.

NatureServe ranks are ''categorical,'' not continuous data, and so cannot have associated errors. However, NatureServe has a system for identifying uncertainty in ranks. Also, a summary of the reasons for each rank is presented with the species comprehensive report on the NatureServe explorer Web site. Those who are interested in details that are more specific can contact their local state natural heritage program to see all of the data that was used to establish a rank.

Monitoring and Evaluation

Monitoring Movement Toward Objectives

Comment: The Forest Service should have monitoring programs that will allow it to adjust its management actions so that it can meet long-term objectives and respond to the unexpected.

Response: Forest Service Manual 1921.5 requires that monitoring provide data and information to evaluate progress toward meeting objectives and desired conditions. Forest Service Handbook 1909.12, section 12, calls for designing a monitoring program that provides a basis for continuing improvement, focuses on key desired conditions, and recognizes the need to monitor management assumptions that have a high degree of uncertainty.

Accountability and Performance-Based Standards

Comment: The directives should include added requirements for accountability and performance-based standards including details of what would be monitored and how this monitoring would be done.

Response: The directives require the monitoring program to identify key questions and performance measures (FSM 1921.5). Forest Service Handbook 1909.12, section 12.2, provides for performance measures as a basis for accountability. These performance measures are tied to near-term objectives and long-term desired conditions. Annual evaluation reports and 5-year comprehensive evaluation reports are to be used to summarize and evaluate the results of monitoring as a means of identifying needed plan adjustments. The Forest Service believes that these requirements are enough for inclusion in the monitoring program, with monitoring details included in the Monitoring Guide and Annual Monitoring Workplan (FSH 1909.12, sec. 12.3).

State Goals for Federal Lands

Comment: Monitoring reviews should include feedback on the accomplishment of state goals defined for Federal lands. The Forest Service should coordinate plan monitoring with a few state-wide indicators of sustainability that can assess whether the state governing body's goals and objectives are being met.

Response: The Forest Service encourages state participation in planning. Forest Service Manual 1921.62 identifies the value of planning collaboratively with the public and other agencies. The roles of the public and other agencies are more clearly described in FSH 1909.12, chapter 30. State involvement during these collaborative efforts is intended to ensure that state goals are appropriately considered in plan components and the associated monitoring program.

Specific Monitoring Requirements

Comment: The Forest Service directives should provide more specific monitoring guidance designed to measure and maintain ecological sustainability, including things such as: monitoring of key potential natural vegetation types; desired conditions and objectives contributing to sustainability; key ecological attributes of each potential vegetation type and species; and performance measures for each ecological attribute.

Response: The guidance for developing, putting into effect, and documenting a monitoring program is intended to provide a monitoring framework applicable to all plans (FSM 1921.5 and FSH 1909.12, sec. 12). The specific details for each monitoring program are not identified in the directives because the Forest Service believes it is necessary to tailor these details to show unit-specific situations.

Implementation, Effectiveness, and Validation Monitoring

Comment: The Environmental Protection Agency suggested that the

directives include more direction for monitoring; specifically, that monitoring be conducted on 3 levels—implementation, effectiveness, and validation—during the 3-year transition period for putting into effect the 2005 planning rule.

Response: During the transition period and until plans are revised or amended to be consistent with the 2005 planning rule, monitoring will be conducted consistent with existing monitoring requirements, many of which specifically address implementation, effectiveness, and validation monitoring. The 2005 planning rule and directives stress monitoring of plan components, specifically to find out if actions taken during plan implementation are reaching plan objectives and moving the unit toward desired conditions. Although not specifically addressed in the directives, monitoring plan implementation and the effectiveness of implementation actions are required to meet monitoring program requirements. Validation monitoring is considered to be a research need and will be done outside the plan monitoring program.

Public Involvement

Comment: The Forest Service should clarify which members of the public will be invited and how they will be involved in designing the monitoring program. This should include coordination and consultation with the public, state governments, and so on in developing and revising monitoring programs.

Response: Involvement of the public in monitoring program design is required by the 2005 planning rule (36 CFR 219.9(a)) and is discussed in the directives (FSM 1921.5 and FSH 1909.12, sec. 12). But, the specifics of how this involvement is to occur and who will be involved cannot be appropriately determined in the directives. The Forest Service believes that these details are best addressed by the Responsible Official for individual planning efforts.

Monitoring Partnerships

Comment: The Forest Service should support state partnerships in collecting and assessing monitoring data used for annual evaluation reports and comprehensive evaluation reports.

Response: Forest Service Handbook 1909.12, section 12.2 recognizes the value of selecting performance measures with agency partners to make easier monitoring across all landownerships.

Montreal Process Criteria and Indicators

Comment: The Forest Service should use the Montreal Process Criteria and Indicators as a framework for monitoring efforts.

Response: The Forest Service has invested substantial energy in assessing the applicability of the Montreal Process Criteria and Indicators along with other international and national approaches and commitments to sustainable development such as the Santiago Declaration, the Rio Declaration on Environment and Development, and the Ottawa Local Unit Criteria and Indicators Development (LUCID) Test (Monitoring for Forest Management Unit Scale Sustainability: The Local Unit Criteria and Indicators Development (LUCID) Test Technical Edition, USDA Forest Service, Inventory and Monitoring Institute Report No. 4, October 2002). Although using criteria and indicators have value and are being used in some plan revision efforts; the Forest Service concluded that the Montreal Process Criteria and Indicators were not applicable at the forest scale.

Monitoring Responsibility

Comment: The Forest Service should not leave monitoring of logging impacts to independent Forest Supervisor's discretion.

Response: The Forest Service agrees that the plan monitoring program should be developed with public participation and has directed Responsible Officials to do so.

New Information

Comment: The Forest Service should use monitoring to identify information not contemplated in plan development that could lead to new systems that improve land productivity or meet desired conditions in another way.

Response: The 2005 planning rule requires monitoring to determine the effects of management on the productivity of the land. The final directives on monitoring show the need to monitor key desired conditions and objectives besides those about land productivity and that monitoring take into account the best available science.

Funding

Comment: The Forest Service should increase funding for its fish and wildlife monitoring programs.

Response: The Forest Service expects that the reduced cost of planning under the 2005 planning rule will permit better funding of monitoring. The priorities for funding monitoring by program area will depend on individual forest monitoring programs tied to key desired conditions and objectives.

State Guidance

Comment: The Forest Service should incorporate state guidance into management reviews where available.

Response: Reviews are conducted, based on monitoring results and evaluations, to help determine if there is a need to amend or revise the plan (FSH 1909.12, sec. 24). Where state guidance is shown in a plan component being monitored or evaluated, this guidance will be considered during reviews.

Comprehensive Evaluation Report

Comment: The Forest Service should specify in the planning directives what media will be used to make the annual and five-year comprehensive evaluation reports available to the public.

Response: The comprehensive evaluation report is a part of the plan set of documents. This may be available to the public in various forms. The Forest Service does not believe that it is appropriate to specify one national approach given the diversity of audiences interested in planning.

Comprehensive Evaluation Report Content

Comment: The Forest Service should require that the comprehensive evaluation report contain a thorough compilation and description of baseline data about ecological system types and species.

Response: Comprehensive evaluation reports are described in FSM 1921.2. Added details on their content are found in FSH 1909.12, sections 13.1, 24.2, and 43.1. In combination, these sections provide for inclusion of a wide range of ecological data and analysis in the report, including trend analysis for key social, economic, and ecological resources (FSH 1909.12, sec. 24.23).

Alternatives

Comment: The Forest Service should consider having the comprehensive evaluation report require the Forest Supervisor to consider alternatives and their impacts in detail.

Response: Based on more than 20 years of experience doing planning EISs, including many fully-developed alternatives, the Forest Service has concluded that it will be more efficient to consider options for specific plan components than to continue developing full alternatives. These options are discussed in FSH 1909.12, section 25.32b. This is shown in the rule and in the final directives.

Comment: Monitoring program of work. The Forest Service should delete from the Forest Service directives the provision establishing a monitoring team and a formal process for setting up

an annual program of work and instead require a comprehensive evaluation report be finished on a five-year schedule.

Response: The provision dealing with the establishment of a monitoring team has been removed from the directives. The Forest Service believes that defining an annual program of work (FSH 1909.12, sec. 12.3) is needed to ensure that annual monitoring priorities are identified and done consistently with available resources. Comprehensive evaluation reports are required every 5 years.

Environmental Management System (EMS)

Comment: The Forest Service should provide more direction to carry out EMS including the relation of EMS to land management planning, the role the public plays in EMS, the types of information needed for EMS, the types of audits to be done, and how the Forest Service will use an international standard.

Response: Confusion is understandable given the lack of EMS experience in the Forest Service, many agency partners, and other interested parties. Based on roughly one year of EMS field experience with qualified consultants, the agency has changed many parts of the EMS directives, mainly by simplifying and clarifying direction. Forest Service Manual 1331 will address EMS authorities, objectives, policies, and responsibilities. The EMS direction about land management planning is in FSM 1921.9. The Forest Service is likely to provide added EMS guidance through a technical guide or other means as more experience is gained.

Comment: The Forest Service should not use EMS or the ISO standard for EMS because it is not applicable to national forest management, the public lacks access to the standard, and the standard would preclude public participation.

Response: The Forest Service is committed to using ISO 14001 under the 2005 planning rule and believes that EMS can be applied to the national forests in a way that will contribute to quality management. The ISO 14001 standard is available for public review in all Forest Service offices. EMS documentation will be available to the public.

Role of Public and States

Comment: The Forest Service should clarify the roles of the public and the states in EMS development and implementation.

Response: The Forest Service believes that public and state involvement in EMS development and implementation will be beneficial, but that no direction on this involvement is needed besides that already in FSM 1921.61 and FSH 1909.12, chapter 30. The Forest Service intends to use the existing public and state involvement direction to inform EMS implementation without directing EMS-specific roles.

Management Review

Comment: The Forest Service should provide ''management review'' direction in the directives to provide consistency across the national forests.

Response: The ISO 14001 standard provides direction for management reviews and the Forest Service believes that no added direction is required at this time.

EMS Terms

Comment: The Forest Service should clarify confusion over terms used in EMS with terms used in planning, especially the ''independent audit'' definition.

Response: The Forest Service recognizes that in some instances planning and EMS use similar terms with slightly different meanings. Applying the definitions in the ISO 14001 standard to EMS will be needed to conform to the standard, but this should not hinder the agency's ability to use different definitions in planning. As the agency gains more EMS experience, clarification can be given about how EMS terms relate to planning terms. Definitions have been added to FSM 1331 specific to Forest Service EMS policies and procedures (administrative unit, facility, and independent second-party EMS audit). The definition ''independent audit'' has been changed to be consistent with USDA's definition of independent audit.

Independent Audits

Comment: The Forest Service should explain how they will use independent EMS audits and certification boards.

Response: The Forest Service is preparing for internal audits according to ISO 14001 and is also looking at options to meet USDA guidance for independent audits. This is an area where added guidance may be developed as the Forest Service gains experience in EMS.

Planning and EMS

Comment: The Forest Service directives should clarify the relation between the plans and the EMS and should use an ISO 14001 EMS template for communicating guidelines to Forest Service units.

Response: Forest Service units are sharing templates and examples as they are developed; however, because an EMS is a continuous improvement process, the Forest Service does not expect to have EMS templates in the directives. Planning direction and guidance about EMS are found in FSM 1921.9; however, in the final directives the agency has only retained information about EMS establishment requirements under the 2005 planning rule and has maintained minimum direction on the relation of the EMS to the land management plan. As the agency gains more experience with EMS, more direction can be added.

Monitoring Data

Comment: The Forest Service should set up regional centers at regional land-grant universities or research stations to serve as repositories for monitoring data and the results of EMS reviews.

Response: The Forest Service has implemented a corporate database, the Natural Resource Information System (NRIS), which the agency intends to use to store monitoring data common to many Forest Service units. The Forest Service believes that storing data with one consistent corporate approach is efficient and will best serve members of the public interested in viewing that data. It is unknown how the results of EMS reviews will be stored or made available to the public.

Timber Management

General Concerns

Comment: The Forest Service should make the Forest Service directives about timber management less discretionary.

Response: The direction provided in the Forest Service manual and handbook must comply with all the applicable natural resource laws, including the NFMA. The NFMA sets up the benchmarks for ecological, social, and economic sustainability that the agency must meet in managing national forests. The law also gives the Secretary of Agriculture the discretion to determine how best to carry out these statutory mandates. The directive system is used by the agency to reiterate and, when needed, provide more specific explanations, procedures, and guidance in the framework provided by the statute for use by field units. The Forest Service believes that the directives provide the appropriate amount of discretion.

Forest Land

Comment: The Forest Service must change section 62.21a of its handbook to

revise the description of what is forest land to avoid erroneous calculations.

Response: The description and calculation methods for determination of forest lands outlined in this section are consistent with NFMA and the 2005 planning rule. Forest land's definition remains unchanged from the 1982 planning rule. The combination of forest inventory data, detailed aerial photos, extensive on-the-ground knowledge, and experience ensures that the assessment of National Forest System land meeting the definition of ''forest land'' is accurate for land management planning purposes.

Rotation Age

Comment: The Forest Service should explain its reason for changing ''rotation age's'' definition to an ''age range due to the need to 'meet the needs of other resources' '' because forest management literature has always referred to ''forest rotation'' as a precise, fixed stand harvest age expressed in years.

Response: The definition and use of ''rotation age'' in the directives is consistent with the meaning of the term as used by the Society of American Foresters. ''Rotation age'' at the plan level is a range of ages based on local forest types and growing conditions, rather than a precise age that can be assigned broadly across a national forest. The Society of American Forester's definition refers to rotation age at the stand level. By definition, a specific and precise rotation age can only be determined at the individual stand level.

Invasive Species

Comment: The Forest Service should direct planners to identify and address invasive species rather than native and non-native ecosystems to avoid litigation.

Response: In response to comments, the Forest Service has removed references to native and non-native ecosystems from FSH 1909.12, chapter 60.

Suitability Determinations

Comment: The Forest Service should explain its reason for deferring key planning decisions until project level analysis. This may be used to reclassify unsuitable lands as suitable. The Forest Service should amend the project level analysis directive to include explicit criteria for acceptance or rejection of a project. Key planning decisions should be made at the initial planning level or project level analysis must be clearly developed.

Response: Lands that are classified as ''generally suitable for timber harvest or timber production'' in the land management plan are continually evaluated during project level implementation of the plan and may be identified as unsuitable at that stage. General suitability for various uses will be found at the plan level using criteria identified in the plan set of documents. Project level analysis is the decision level where ''irreversible and irretrievable commitments of resources'' are made. Project level analysis must follow the NEPA process. The NEPA process is clearly developed and defined (FSM 1950 and FSH 1909.15). The data used for project level analysis is more site specific and ensures that a better resource management decision will be made than at the forest-wide strategic planning level. For these reasons, determining final timber suitability must be made at the project level. If the Responsible Official finds that the project or activity is inconsistent with the general suitability identification, the plan should be amended.

Unsuitable Timber Lands

Comment: The Forest Service should make sure that enough areas will continue to be identified and designated as ''unsuitable for timber production'' by reviewing plan documents at least every ten years to see if changes have occurred that make it necessary to remove lands from the ''suitable for timber production'' group and by removing lands identified as ''unsuitable for timber production'' from the timber land base for ten years as required by NFMA.

Response: Guidance on identifying lands not suitable for timber production and the review of those determinations are found in FSM 1920.12c and FSH 1909.12, section 62.3. Guidance includes the NFMA (16 U.S.C. 1604(k)) requirement to review lands not suited for timber production every 10 years. Lands that are classified as ''generally suitable for timber harvest or timber production'' in the land management plan are continually evaluated during project level implementation of the plan and may be identified as unsuitable at that stage. Forest Service Handbook 1909.12, chapter 60 has been modified to clearly define lands generally suited for timber production and ''other lands'' where harvests may occur for other objectives. The clear identification of ''other lands'' called for in the directives more explicitly defines lands that may receive ''salvage sales or sales necessitated to protect other multiple-use values'' as allowed by 16 U.S.C. 1604(k).

Comment: The Forest Service should consider that the process for designating lands as unsuitable for timber harvest is circular and the definition of ''unsuitable lands'' contains no criteria determining unsuitability as required by NFMA. Lands unsuitable for timber should not be found by residual calculation only after the suitable timber lands are identified. NFMA requires that unsuitable lands be identified first. Why were new terms ''generally suitable'' and ''actually suitable'' created? These terms are not mentioned or authorized by NFMA.

Response: Substantial changes were made to the draft FSH 1909.12, chapter 60 to clarify and define the suitability determination process. Forest Service Handbook 1909.12, section 62.1 lists the general categories of lands not suitable for timber harvest as outlined in Title 36, Code of Federal Regulations, section 219.12—Suitable uses and provisions required by NFMA. The Secretary has discretion under the act to determine how best to develop suitability determination criteria. The criteria in these general categories are developed at the forest level considering the specific physical, biological, and economic elements under 16 U.S.C. 1604(k).

NFMA (16 U.S.C. 1604(k)) does not specify that unsuitable lands be identified first; it simply directs the Secretary to identify unsuitable lands. Identification of the suitability of lands for timber harvest and timber production at the land management plan level is a general determination made for planning purposes; therefore, the term ''generally suitable'' and ''generally unsuitable'' are used. The final suitability determination is made at the project level.

Generally and Actually Suitable

Comment: The Forest Service should explain the reason for creating the new terms, ''generally suitable'' and ''actually suitable'' in the Forest Service directives' guidance for designation of timber lands. These terms are not mentioned or authorized by NFMA.

Response: Forest Service Handbook 1909.12, section 62 has been revised to clarify the suitability process. Identification of the suitability of lands for timber harvest and timber production at the land management plan level is a general determination made for planning purposes; therefore, use of the terms ''generally suitable'' and ''generally unsuitable.'' The final directives do not use the term, actually-suitable. The decision on suitability of lands for a specific use is appropriately made at the site-specific project level. The NFMA recognizes that the

suitability of lands for timber harvest will change by directing the Secretary to review suitability determinations every ten years. The act also gives the Secretary discretion about the most appropriate method for determining suitability.

Below-Cost Timber Sales

Comment: The Forest Service should set out a process for identifying lands where the costs of timber production and road construction are unlikely to be covered by future receipts. These lands should be deemed unsuitable and off-limits to timber harvest to meet the goal of limiting below-cost timber sales. The Forest Service should explain its reason for ending all economic tests for determining whether lands are unsuitable for timber harvest.

Response: The NFMA (16 U.S.C. 1604(k)) does specify that economics is one factor to be considered in identifying lands not suited for timber production. In response to comments, FSH 1909.12, section 62.21 includes added direction on the role of economics in suitability determinations. Timber harvest on lands deemed not suited for timber production in the land management plan is explicitly allowed by NFMA (16 U.S.C. 1604(k)) for salvage and for other multiple-use purposes. The NFMA does not prohibit harvest when costs exceed revenues.

Classes of Suitable Timber Lands

Comment: The Forest Service should not create two classes of suitable timber lands because it dramatically and artificially expands the suitable timber base and projected timber sale levels.

Response: The NFMA requires identifying lands suitable for timber production. The NFMA also allows timber harvest on lands identified as unsuitable for timber production. The definitions section of the directives, FSH 1909.12, section 60.5 provides an explanation of the differences between these two activities. The interim directives were written to explicitly recognize the lands where harvest is permitted by the NFMA on lands identified as unsuitable for timber production. The lands suitable for timber harvest are lands where timber harvest is a tool that may be used to meet ecological goals, such as restoration of appropriate fire regimes, but commercial harvest is not a primary goal for the area. Both types of land are considered when estimating the Timber Sale Program Quantity for the plan. Setting up the added group of lands suitable for timber harvest identifies added lands where harvest may occur but does not dramatically increase timber sale quantity.

Harvest and Reforestation Guidelines

Timber Sale Volume

Comment: The Forest Service should not require specific timber volume objectives to be specified in plans because timber sale volume is not an independent objective.

Response: Land management plans are required to identify objectives (36 CFR 219.7 (a)(2)(ii)). Objectives are described as follows: ''Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions.'' The NFMA (16 U.S.C. 1604(e)(2), 1604(f)(2), 16 U.S.C. 1611) requires that a land management plan must provide timber management projections; however, there is no specific requirement to identify timber sale volume as a plan objective.

Even-Aged Management

Comment: The Forest Service should stop practicing even-aged management of timber.

Response: Even-aged management is a legitimate, silvicultural practice that may be used to create or maintain healthy forested landscapes. Forest Service Handbook 1909.12, section 64.5 outlines the requirements for ensuring that clear-cutting is the best silvicultural technique and that other even-aged cuts, such as shelter wood harvest are appropriate. This guidance complies with the NFMA (16 U.S.C. 1604(g)(3)(F)(i)).

Clearcuts

Comment: The Forest Service should revise the Forest Service directives to include standards that limit the size of clearcuts, protect streams from logging, ensure prompt reforestation, restrict the annual rate of cutting, and determine what land is economically suitable for timber production.

Response: Maximum size limits for even-aged harvest systems are addressed in FSM 1921.12e; protection of streams in FSM 1921.12a, paragraph 3; reforestation requirements in FSM 1921.12g; harvest rates in FSM 1921.12d; and suitability determinations in FSM 1921.12c. More detailed guidance is found in FSH 1909.12, chapter 60 for even-aged harvest, reforestation and stocking requirements, suitability determinations, calculation of long-term sustained yield, and calculation of timber sale program quantities. Detailed direction on watershed protection and management may be found in FSM 2520.

Even-Aged Regeneration Harvest

Comment: The Forest Service should clarify its guidelines of maximum size limits for even-aged regeneration harvest to allow the public to comment.

Response: Public review of proposals to exceed maximum harvest size limits is required by 16 U.S.C. 1609(g)(3)(F)(iv). Forest Service Manual 1921.12e establishes the size limitations for individual harvest units. Added guidance on size limitations may be in the plan and subject to public notice and comment. Projects often contain many individual harvest units. Project size will vary depending on local conditions and considerations. The environmental analysis conducted for each project, as required by the NEPA, provides individuals and organizations the opportunity to provide input on issues of concern to them.

Culmination of Mean Annual Increment

Comment: The Forest Service should apply the culmination of mean annual increment requirement to uneven-aged stands that are being managed to produce wood fiber and to ensure that stands reach their optimum economic value.

Response: By definition, uneven-aged management harvests are regulated by specifying the number or proportion of trees of particular sizes to retain in each area, thereby maintaining a planned distribution of size classes (FSH 1909.12, sec. 60.5). Application of culmination of mean increment uneven-aged management would not be a sound silvicultural practice (16 U.S.C. 1609(m)).

Comment: The Forest Service should provide a more specific reason than ''for the use of sound silviculture'' when allowing departures from harvesting of stands at the culmination of mean annual increment.

Response: The phrase ''culmination of mean annual increment'' is taken directly from the NFMA. The NFMA authorizes the Secretary to set up standards to ensure that stands of trees have generally reached the culmination of mean annual increment provided the standards do not preclude using sound silvicultural practices.

Projected Trends

Comment: The Forest Service should provide more specific direction to forest planners in describing ''projected trends of future forest ecological conditions'' and ''projected vegetative and other environmental changes.''

Response: Trend analysis is described at FSH 1909.12, section 24.23. Forest Service Manual 1921.7 provides general

guidance on sustainability. Changes were also made to FSH 1909.12, section 65.4 to better address projected trends.

Environmental Policy Statement

Comment: The Forest Service should clarify and revise section 61 of its handbook to address various goals and provide a foundation for national forests to develop their environmental policy statement.

Response: Forest Service Handbook 1909.12, section 61 has been redrafted to address vegetation management requirements at the project level. The role of land management planning and sustainability is addressed in FSH 1909.12, chapter 40. Requirements for the environmental policy are addressed in ISO 14001 and FSM 1330.

Size of Timber Cuts

Comment: The Forest Service should modify its provision for size of timber cuts to stipulate that they should exceed maximum size limits only where such exception is consistent with sustainable use and ecological considerations.

Response: Exceptions to the size limits as described in FSM 1921.12a and 1921.12e are subject to environmental analysis and documentation as required by the NFMA and must comply with the long-term sustainability desired conditions and objectives established in that unit's land management plan.

Catastrophic Events

Comment: The Forest Service should amend its handbook's provisions for restoration of areas deforested by catastrophic events to include reasonable assurances of adequate restocking.

Response: The policy direction on reforestation in FSH 1909.12, chapter 60 of the interim directives has been removed as it is redundant to FSM 2470. The agency policy on reforestation has not changed and is founded in the NFMA, section 3(d)(1) that states, ''It is the policy of the Congress that all forested lands in the NFS be maintained in appropriate forest cover * * * in accordance with land management plans.'' Land management plans may address the degree to which reforestation is required after catastrophic events.

Volume Trends

Comment: The Forest Service should display volume trends using Forest Inventory and Analysis data.

Response: Changes were made to the exhibits in FSH 1909.12, section 65.6 to better display volume trends.

Averages

Comment: The Forest Service should provide more direction on when using an average would be more desirable than using field-developed inventory information.

Response: Forest Service Handbook 1909.12, section 63.4 has been reorganized to address this topic. This section provides direction on calculating conversions for saw timber, small roundwood, and biomass.

Forest Plan Amendment

Comment: The Forest Service should provide direction in section 63 of its handbook on when a plan amendment would be required or reference applicable sections of the FSM.

Response: Direction on plan amendments is found in FSM 1921.3 and FSH 1909.12, chapter 20. The Responsible Official must determine whether changed conditions or other issues require a plan amendment.

Evaluation Reports

Comment: The Forest Service should direct planners to cite the report, ''The Scientific Basis for Silvicultural and Management Decisions in the NFS (Forest Service General Technical Report (GTR) WO–55),'' rather than requiring evaluation reports.

Response: Forest Service Handbook 1909.12, chapter 60 has been reorganized so that this topic is now discussed in section 65.4. Forest Service GTR WO–55 is useful as a general reference but is not detailed enough for use at the plan level.

Long Term Sustained Yield

Definition of Long Term Sustained Yield (LTSY)

Comment: The Forest Service should not use lands not suited for timber production for calculating the Long Term Sustained Yield Capacity (LTSYC) because it will be difficult to estimate timber harvests for objectives other than timber production. Harvests for other objectives will cause them to be sporadic and uneven. The LTSY and Timber Sale Program Quantity (TSPQ) are calculated from different land bases, allowing excessive harvesting on lands suitable for timber production.

Response: Forest Service Handbook 1909.12, chapter 60 has been modified to clearly define lands generally suited for timber production and ''other lands'' where harvests may occur for other objectives. The chapter has also been changed to require that the LTSY and TSPQ be calculated separately for those two classes of lands. Calculating the LTSY from lands generally suited for timber production is the same as the calculation used under the 1982 planning rule. The practice of calculating the LTSY on unsuitable lands is new. The Forest Service agrees it will be more difficult to make reliable estimates of the LTSYC and TSPQ from lands where timber harvest is a by-product of reaching other goals. The Forest Service believes these difficulties can be addressed when experience is obtained. Added guidance to the field may be needed later to show the results of that experience.

Harvesting Below the LTSYC

Comment: The Forest Service violates NFMA because they do not require a decade-end reconciliation of harvest with sustained yield limits. There are no cases where harvesting above the calculated LTSYC would be consistent with multiple-use objectives. More detailed direction is needed to spell out the few circumstances under which a departure is permitted because the language guiding the Responsible Official in considering departures is too weak. The amount of timber harvest permitted is artificially inflated by allowing departures and by calculating LTSYC from all lands where timber harvest can occur. The directives allow departures to continue indefinitely, making the LTSY limit meaningless.

Response: The term ''departure'' used in relation to the Long Term Sustained Yield Capacity (LTSYC) has been replaced with the more descriptive phrase ''planned harvest exceeding the LTSYC''. Specific direction addressing planned harvests that exceed the LTSYC is now found in FSH 1909.12, section 63.5. Planned harvests that exceed the LTSYC are permitted by 16 U.S.C. 1611. This statute does not require a decade-end reconciliation of harvest with the sustained yield limit. Forest Service Handbook 1909.12, section 63.4 requires the Responsible Official to meet specific criteria, take into account all the parts of sustainability, and involve the public when considering a planned harvest that exceeds the LTSYC. Harvests exceeding the LTSYC are reconciled during revision of the plan.

In response to public comment, the directives have been modified so that the relation between the TSPQ and the LTSYC must be considered separately on lands suitable for timber production and ''other lands'' where harvests may occur. This separate assessment should address concerns that harvest levels will be artificially inflated.

Restoration activities being undertaken now and in the near future are examples where short-term timber harvest levels may exceed the LTSYC.

Many areas have stand densities that are much higher than historical levels creating greater fire risk. Timber harvest treatments may be used on these lands to reduce fuels and reach a desired stand density. Future fuel reduction treatments on these lands may be a combination of small harvests and controlled burns, making the long-term harvest levels lower than short-term harvest levels.

Wilderness and Roadless Areas

Wilderness Recommendations

Comment: The Forest Service should recommend all roadless areas to Congress for permanent protection through wilderness designation.

Response: The agency will do an evaluation of inventoried roadless areas for possible recommendation for wilderness designation during revision of a land management plan. The outcome of that evaluation will determine which areas are administratively recommended for wilderness designation by Congress.

Public Support

Comment: The Forest Service must consider that the public has expressed overwhelming support for roadless area conservation when determining how the roadless areas will be managed.

Response: Responsible Officials will consider all appropriate public input when revising land management plans. It is appropriate for the Responsible Official to develop plan components; such as, desired conditions, to protect roadless character for lands not recommended for wilderness.

Contiguous Roadless Areas

Comment: The Forest Service should inventory all roadless areas contiguous to existing wilderness as one area because that was the will of Congress.

Response: It would not be appropriate to combine many separated roadless and undeveloped areas and consider them as one area when determining their suitability for the inventory of potential wilderness. Each area is potentially unique and must demonstrate characteristics that make it suitable for wilderness.

Protection of Roadless Areas

Comment: The Forest Service should use the protective safeguards and exceptions in the roadless rule as the baseline for protecting roadless areas.

Response: The Roadless Areas Conservation Rule was withdrawn and replaced by the State Petitioning rule on May 13, 2005. The directives for plan revision and amendment are directed toward the inventory and evaluation of roadless areas rather than their protection. Consideration of wilderness suitability is inherent in land management planning. Unless otherwise provided by law, all roadless, undeveloped areas that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act of 1964 are evaluated and considered for recommendation as potential wilderness areas during plan development or revision. Management of those inventoried roadless areas is subject to the land management planning process, which includes collaboration with and involvement by all interested parties.

RARE I and II

Comment: The Forest Service should explain the current status of the Roadless Area Review and Evaluation (RARE) I and II studies.

Response: In 1972, the agency undertook an inventory and evaluation of all undeveloped areas in the NFS that could be considered for possible inclusion in the National Wilderness Preservation System (NWPS). This first roadless area review and evaluation, later called RARE I, concluded in October of 1973 with the selection of 274 wilderness study areas containing 12.3 million acres. These selections were made from an inventory of 1,449 areas containing 56 million acres. The reviews of these study areas were to be completed in the planning process.

In 1977, concerns were expressed that the planning process might be too slow for completing timely reviews for the 274 study areas. There were also concerns that some areas might have been overlooked and that RARE I did not adequately inventory the national grasslands or the eastern national forests. In response to these concerns, the Secretary started RARE II. RARE II was finished in January of 1979 and identified 2,919 areas containing just over 62 million acres; recommended that 15 million acres be added to the NWPS, 36 million acres be allocated to non-wilderness uses, and about 11 million acres be placed into a further planning category.

In June of 1979, the state of California began a lawsuit challenging the RARE II decision to designate inventoried roadless areas in the state as non-wilderness. The U.S. District Court and the Ninth Circuit Court of Appeals agreed that the RARE II Final Environmental Impact Statement (FEIS) did not comply with the requirements of NEPA.

Following the Ninth Circuit's decision in 1982, the planning regulations were revised in 1983 to require evaluating inventoried roadless areas for wilderness potential in land management planning. The planning regulation allowed the agency to maintain discretion over developing inventoried roadless areas after a land management plan was finished. Subsequent court decisions supported the concept that non-wilderness multiple-use management prescriptions assigned to inventoried roadless areas in land management plans are permissive rather than a mandate or commitment to development because the ''no action'' alternative still exists for these areas. Environmental analysis and NEPA documents, for site-specific project proposals in inventoried roadless areas assigned to non-wilderness management prescriptions, must look at whether to develop, not just how to develop.

Areas Previously Released by Congress

Comment: The directives should clearly note in FSM 1923 that areas released from wilderness consideration by Congress in past wilderness bills will not be included as potential wilderness areas.

Response: In the 1982 planning regulations, as amended, and the current 2005 planning regulations, there is a requirement to consider and evaluate, unless otherwise provided by law, all NFS lands possessing wilderness characteristics for recommendation as potential wilderness areas during the development or revision of a land management plan (36 CFR 219.7(a)(5)(ii). The policy statement in FSM 1923 reiterates this requirement: ''Unless otherwise provided by law, all roadless, undeveloped areas that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act of 1964 shall be evaluated and considered for recommendation as potential wilderness areas during plan development or revision.'' Although wording varies to some degree in the various wilderness bills, this wording usually considers these areas being subject to wilderness reviews during the plan revision process.

Roadless Rule

Comment: The Forest Service should restore the roadless rule.

Response: On July 14, 2003, the U.S. District Court for the District of Wyoming found the roadless rule to be unlawful and ordered that the rule ''be permanently enjoined.'' On May 13, 2005, USDA promulgated a new rule at 36 CFR part 294 entitled ''State Petitions for Inventoried Roadless Area Management.'' This new rule establishes a petitioning process that will provide Governors with an opportunity to seek establishment of or adjustment to

management requirements for NFS inventoried roadless areas in their states. This opportunity for submitting state petitions is available until November 13, 2006. If a petition is accepted by the Secretary of Agriculture, the Forest Service will work cooperatively with the state to propose a state-specific rule that will address the provisions of the petition. A proposed rule will be accompanied by the appropriate NEPA documentation and made available for public review and comment. Following evaluation and consideration of all public comments, the Secretary can then promulgate the state-specific rule for the management of inventoried roadless areas in that state.

Protect Roadless Areas

Comment: The Forest Service should protect roadless areas.

Response: Evaluating inventoried roadless areas for their wilderness potential, and the management of inventoried roadless areas not recommended for wilderness, takes place in the land management planning process that includes collaboration with and involvement of interested parties. Also, the United States Department of Agriculture promulgated the state petitions for Inventoried Roadless Area Management Rule on May 13, 2005, that established a petition process that provides Governors with an opportunity to seek establishment of or adjustment to land management requirements for NFS inventoried roadless areas in their states through a state-specific rulemaking.

Wild and Scenic Rivers

Review of Potential Rivers

Comment: The Forest Service should require a review of potential wild and scenic rivers during all forest plan revisions.

Response: The final directives retain revisiting a wild and scenic river evaluation as changed circumstances warrant. Previously, a systematic inventory conducted to find eligible rivers or a comprehensive administrative unit-wide suitability study must have been documented in the planning record.

Evaluation Factors

Comment: The Forest Service should stress certain topics in the Forest Service directives' Wild and Scenic Rivers section including consideration of adjacent wetlands and estuaries/coastal zones, current condition of riparian and adjacent forest, catastrophic events, invasive species, the role of active management (vs. restrictions) to help maintain or enhance designations, and compatibility with other unique land allocations.

Response: The final directives retain a detailed discussion of factors to consider in evaluating the suitability of an eligible river for inclusion in the National Wild and Scenic Rivers System (National System) in FSH 1909.12, section 82.41. These factors include the potential uses of land and water that would be enhanced, foreclosed, or curtailed by designation. Consideration of current conditions, including other land allocations, is also a part of eligibility as described in FSH 1909.12, sections 82.14 and 82.14a.

Hydrology

Comment: The Forest Service should consider unique or exemplary hydrology as a primary criterion for Wild and Scenic River designation.

Response: The final directives retain hydrology as an example of ''other similar values'' for which a river may be found eligible (FSH 1909.12, sec. 82.14a, para.7).

Native Species

Comment: The Forest Service should stress natural/native species, habitat diversity, and avoiding the spread of invasive species in Wild and Scenic River areas.

Response: The final directives retain emphasis on resident/anadromous fish populations, indigenous wildlife species, and various aspects of associated habitat, including diversity, in determining whether such values are ''outstandingly remarkable'' (FSH 1909.12, sec. 82.14a, paras. 4 and 5). Botany may also be evaluated as an ''outstandingly remarkable'' value; including emphasis on native species/plant communities and habitat diversity.

Corridor Widths

Comment: The Forest Service should justify the one-quarter mile boundary. It seems arbitrary, especially when the role of topography is not acknowledged. Also, there is no mention of key wetlands, oxbows, estuaries, and so on, as part of study area.

Response: For a legislatively mandated study, Congress established in section 4(d) of the Wild and Scenic Rivers Act a boundary of one-quarter mile from the ordinary high water mark on each side of the river. The final directives retain a minimum boundary of one-quarter mile with the added guidance that such a boundary ''may include adjacent areas needed to protect the resources or facilitate management of the river area'' (FSH 1909.12, sec. 81.3).

River System or Basin Integrity

Comment: While holistic, watershed-based management strategy seems appropriate, a vague and undefined suitability factor like ''the contribution to river system or basin integrity'' provides little or no understanding and focus for decisions.

Response: The final directives retain ''contribution to river system or basin integrity'' as one of the factors that may be used to evaluate the suitability of an eligible river for the National Forest System. Input from organizations and individuals familiar with specific river resources should be sought to define factors like the contribution to river system or basin integrity.

Benefits From Designation

Comment: The Forest Service should explain whether the wild and scenic river evaluation required in the Forest Service directives would include a disclosure of positive outcomes expected from specific management components of wild and scenic designation.

Response: The final directives retain direction from section 4(a) of the Wild and Scenic Rivers Act; for example, to address the reasonably potential uses of the land and water that would be enhanced, foreclosed, or curtailed with designation. Such analysis would include the positive benefits to land and water from designation. The final directives retain providing ''guidelines as integral parts of the alternative'' (FSH 1909.12, sec. 83.24).

Vegetation Management and Roads

Comment: The Forest Service should consider that while limiting access roads and tree/vegetation cutting in areas eligible for wild and scenic river status may be suitable for that designation, it may also significantly increase the risk of losing key values that contributed to the designation.

Response: The final directives retain the ability to use a range of vegetation management and timber harvest practices in scenic and recreational river corridors provided these practices protect, restore, or enhance the river environment. Cutting of trees and other vegetation is not permitted in wild river corridors except ''when needed * * * protect the environment, including wildfire suppression.''

Fish and Wildlife Habitat Projects

Comment: The Forest Service should provide more specific guidance in the Forest Service directives Wild and Scenic Rivers section in regard to authorized and prohibited fish and wildlife habitat management projects.

Response: The final directives retain existing guidance for evaluating wildlife and fish projects in addition to the requirement to evaluate any part of such project that has potential to affect the river's free-flowing character as a water resources project.

Projects To Control Non-Native Species

Comment: Evaluating fish and wildlife habitat management projects, such as impoundments intended to prevent non-native or invasive species from migrating upstream as water resources projects may prevent or preclude activities needed to protect or restore native species.

Response: The Wild and Scenic Rivers Act has a three-fold purpose: protecting and enhancing a river's free-flowing character, its water quality, and its ''outstandingly remarkable'' values. Free-flowing is defined broadly in the act as ''flowing in natural condition without impoundment, diversion, straightening, riprapping or other modification of the waterway.'' The final directives retain guidance to evaluate any part of a wildlife or fish project that has potential to affect a river's free-flowing character as water resources projects, consistent with the act. This requirement is not an automatic prohibition of in-stream wildlife or fish projects.

Condition Classes

Comment: The Forest Service should consider revising the Forest Service directives on wild and scenic river evaluation to add a requirement to assess and disclose the current anticipated ''condition classes'' of the riparian and adjacent forest to such major influences as wildfires, insects, and diseases.

Response: The final directives retain a detailed discussion of factors to consider in evaluating the suitability of an eligible river for inclusion in the National Forest System in FSH 1909.12, section 82.41. These factors include the potential uses of land and water that would be enhanced, foreclosed, or curtailed by designation.

Environmental and Heritage Preservation

Environmental Protection

Comment: The Forest Service should protect our environment for the benefit of future generations, protect animal and plant species, protect water resources, prevent global warming, protect from oil and logging interests, protect the air supply including visibility, and provide recreational opportunities.

Response: The Forest Service is mandated by many statutes to protect and manage the NFS for multiple-use values. The Forest Service directives allow all these important environmental issues to be considered during the forest planning process as the Responsible Official deems appropriate.

Comment: The Forest Service should start thinking in terms of habitat restoration and high rise dwellings to alleviate the pressure on wildlife.

Response: Habitat restoration is certainly a management option that can be considered during the forest planning process. High rise dwellings are not in the scope of Forest Service directives.

Comment: The Forest Service should support developing alternative sources of power and building materials.

Response: These issues are outside the scope of the Forest Service directives. The Forest Service and United States Department of Agriculture did evaluate the potential for renewable energy development on NFS lands. The technical report titled, Assessing the Potential for Renewable Energy on National Forest System Lands, written by R. Karsteadt, D. Dahle, D. Heimiller and T. Nealon can be viewed at *http://www.osti.gov/bridge* or paper copies are available for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 865–576–8401, FAX 865–576–5728 or e-mail mail to: *reports@adonis.osti.gov.*

Comment: The Forest Service should protect heritage resources because the National Historic Preservation Act of 1966 requires it.

Response: The comment is correct and the Forest Service is legally mandated to protect heritage resources on NFS lands by the National Historic Preservation Act and a host of other statutes and Executive orders.

Resource Extraction

Comment: The Forest Service should stop oil and gas extraction and tree harvesting on NFS Lands. Others think that the Forest Service should maintain an even balance between resource extraction and protection of wild areas. One respondent stated that all historical improvements should be disclosed along with their cost and who paid for them. Some respondents believed that industries are being allowed to profit from the national forests at a cost that will be borne by future generations.

Response: The Forest Service directives guide planning for the management of the NFS. The many legal authorities governing the Forest Service's management of NFS lands require it to consider resource extraction and timber harvesting among the multiple uses to which those lands are subject.

Mineral Extraction Activities

Comment: The Forest Service should not allow the economic benefits of mineral extraction activities to outweigh environmental concerns.

Response: Forest Service Handbook 1909.12, section 13.13d is in accord with the Federal Land Policy and Management Act of 1976 (FLPMA). Under FLPMA, multiple-use includes Federal energy and mineral resources underlying NFS lands. Exploration and production of those resources is considered one of the ''principle or major uses'' under FLPMA which, under section 202(e)(1) of that act, are to be given special consideration in the planning process.

Fire Management

Comment: The Forest Service should thin and maintain the forest floor to properly manage fires to reduce the risk of catastrophic fires. Other respondents claim that thinning to reduce fuels will not promote public safety.

Response: The Forest Service directives offer no specific guidance on management activities that should or should not be used to address catastrophic fires. However, the planning rule and the directives require that management activities be monitored for their effectiveness in reaching the objectives and desired conditions stated in the plan.

Transportation

Comment: The Forest Service should designate ''no motor vehicle'' areas and reclaim existing roads. Others think the Forest Service should stop subsidizing construction of roads for logging, mining, and energy interests. One respondent commented that the directives should contain a provision for ''no new road of any kind.''

Response: The Forest Service disagrees that the directives should contain explicit direction on road management. The directives are intended to provide guidance on planning. This guidance directs the Responsible Official to consider some of the issues raised by the respondents when developing desired conditions, objectives, and guidelines for transportation.

Water Resources Management

Water Quality Data

Comment: The Forest Service should be cautious when using water quality limited stream data generated by the

U.S. Environmental Protection Agency (EPA).

Response: The Forest Service will use the best available data and use that data consistent with the requirements of the Data Quality Act (35 U.S.C. 3516).

Watershed Planning

Comment: The Forest Service should carry out intermediate watershed planning.

Response: The Department of Agriculture along with several other Departments and Agencies developed a *Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management* (65 FR 62566, Oct. 18, 2000). This policy requires that a science-based approach be used for watershed assessments. The information generated during the assessments will become part of the basis for identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds. The Forest Service has developed a science-based approach and has documented the procedures (Ecosystem Analysis at the Watershed Scale, Federal Guide for Watershed Analysis Version 2.2, August 1995) available at the Northwest Forest Plan Information Center and Library (*http://www.reo.gov/library*). Currently, each national forest conducts at least one watershed assessment a year dependent on funding availability. Information from these assessments may be used in the comprehensive evaluation.

Water Rights

Comment: The Forest Service should be more careful when addressing ownership of water rights.

Response: The Responsible Official is directed to identify the method used to identify the unit's non-consumptive water needs, and the options available to support the states' water allocation process (FSH 1909.12, sec. 13.11c).

Recreation Management

Trails

Comment: The Forest Service should make trails open and accessible to the public. It would be reasonable to fund forests that are used rather than those that are closed to the public.

Response: The Forest Service directives do not restrict trail use by the public.

Appalachian Trail

Comment: The Forest Service should identify the Appalachian National Scenic Trail as a special management or geographic area under the Forest Service directives. This will help to define this as a special area with legislative designation and improve the chances for protection and consistent management across administrative boundaries.

Response: Special areas such as the Congressionally-designated Appalachian National Scenic Trail are addressed under FSM 1921.02b, Special Area Designations. Forests are required to recognize that these areas are nationally important and that the plan provides appropriate guidance to protect, maintain, and enhance the values associated with these areas. Special areas will be described in the vision document as desired conditions. These desired conditions may be written for geographic conditions such as the Appalachian Trail that traverses several national forests in the East. The desired conditions describe the ecological, economic, and social attributes that characterize the outcome of land management and the Appalachian Trail.

Comment: The Forest Service should determine the suitability of land for various resources, not just timber production because NFMA requires it. Suitability for recreational use of off-road vehicles is especially needed because off-road vehicle abuse damages the environment.

Response: Off-road vehicle use is addressed separately in 36 CFR parts 212, 251, 261, and 295, Travel Management; Designated Routes and Areas for Motor Vehicle Use issued on November 9, 2005. Section 212.55 specifically addresses *Criteria for designation of roads, trails, and areas.* Due to the complex nature of this management issue, such choices and evaluations are best made at the local level, with full involvement of Federal, tribal, state, and local governments, motorized and non-motorized users, and other interested parties, as provided for in the 2005 planning rule. Forest Service directives for this rule have not been developed at this time.

Lands Management

Land Acquisition

Comment: The Forest Service should put more emphasis on better management of existing lands rather than on land acquisition. The Federal government cannot afford to care for what it has let alone buy more. Jobs are cutout and these are jobs that are justified for forest management. This is either due to lack of funding or they are following projects such as the ''Wildlands Project'' where a primitive setting is desired. This ideology is not practical in the 21st century and will prove to be a loss of resources for future generations.

Response: Land acquisition is an important program for conserving resources that might not be protected if not federally owned. The Forest Service directives do provide some general guidelines for considering land acquisitions during the planning process at FSH 1909.12, section 13.13g. Land acquisition is considered a viable management option for the NFS and is authorized by several statutes. More detailed policy and guidelines can be found in FSM 5420, Land Purchases and Donations and FSH 5409.13, Land Acquisition Handbook.

Special Areas

Comment: The Forest Service should consider designating special areas and clarify who has the authority to designate such areas including recreational, wildlife, scenic, paleontological, and other areas not listed at FSM 1921. The directives should clarify who has the authority to designate such areas not just botanical and geologic.

Response: FSM 1921, exhibit 01 issued in interim directive 1920–2005–2 has been moved to FSH 1909.12, section 11.15. The exhibit contains examples of some special areas that may be considered during the planning process. The exhibit is not a comprehensive list.

Content of Directives

The following is an overview of what the directives contain related to land management planning.

Forest Service Manual (FSM)

FSM 1900—Planning—Chapter Zero Code

In general, the zero code sections of the directive coding scheme are used to identify general instructions, such as authority, objectives, and policy that apply to all subsequent direction within the section where the zero code is set out. The final directive changes definitions and other changes to be consistent with the 2005 planning rule. The final directive establishes policy that analysis should be appropriate to the decision being made and the risks associated with that decision, and that planning should be done in a reasonable manner, at reasonable costs, and in a reasonable amount of time.

FSM Chapter 1920—Land Management Planning

FSM 1920.2—Objectives

The final directive revises objectives to reflect the principles of the National Forest Management Act of 1976 (NFMA)

and to update sustainability wording consistent with the 2005 planning rule.

FSM 1920.3—Policy

The final directive adds that the responsible official must conduct sustainability evaluations within an area large enough to consider broad-scale factors and trends over large landscapes when plans are prepared or revised.

FSM 1920.4—Responsibility

The final directive reserves the authority to the Chief to approve the schedule of plan revisions at FSM 1920.41.

FSM 1921—Land Management Planning Under the 2005 Planning Rule

The final directive changes the caption from ''Regional Planning'' to ''Land Management Planning Under the 2005 planning rule.'' Forest Service Manual 1921.03 adds policy that project or activity decisions should not be included in plans. Forest Service Manual 1921.04 adds responsibilities for Regional Foresters and Forest Supervisors. Forest Service Manual 1921.1 includes direction on plan requirements and vegetation management requirements from the National Forest Management Act.

Forest Service Manual 1921.12 adds a section on National Forest Management Act requirements. Forest Service Manual 1921.12a adds requirements for timber management in carrying out projects and activities. Forest Service Manual 1921.12b adds requirements for vegetation management guidance in land management plans. Forest Service Manual 1921.12c adds requirements for identifying lands not suitable for timber production with re-evaluation to occur every ten years. Forest Service Manual 1921.12d adds requirements for estimating long-term sustained-yield capacity (LTSYC) and limitations on timber harvest on ''lands generally suitable for timber harvest'' to be equal to or less than the LTSYC. Also, adds exceptions to these limits of timber harvest and requirements for timber management projections. Forest Service Manual 1921.12e adds requirements for guidelines of maximum size limits for even-aged regeneration harvest. Forest Service Manual 1921.12f adds requirements for culmination of mean annual increment (CMAI) of growth and even-aged regeneration harvest and clarifies when the CMAI concept does not apply. Forest Service Manual 1921.12g adds requirements for plan guidance on restocking.

Forest Service Manual 1921.2 includes direction on plan evaluations. Forest Service Manual 1921.21 requires the Responsible Official to review evaluations and determine if changes are needed in plan components. Forest Service Manual 1921.3 describes the Responsible Official's discretion to determine the need for change in plan components and the need for a plan amendment or plan revision. Forest Service Manual 1921.4 describes plan implementation and FSM 1921.5 describes plan monitoring. Forest Service Manual 1921.6 describes public participation and collaboration requirements.

Forest Service Manual 1921.7 describes social and economic evaluation, civil rights and environmental justice compliance, ecological evaluation, ecosystem diversity, species diversity, and plan components for sustainability. The final directive establishes at FSM 1921.73 that the rigor of analysis should be proportional to the level of risk to ecosystems and species. A key requirement at FSM 1921.77c states that for species-of-concern, the plan should provide for appropriate ecological conditions that are of appropriate quality, distribution, and abundance to allow species populations to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives.

Forest Service Manual 1921.8 describes the role of science in planning, including uncertainty, review, and documentation. Forest Service Manual 1921.9 provides that an environmental management system (EMS) must be established for each National Forest System (NFS) unit developing, revising, and amending plans under 36 CFR 219.5 and 36 CFR 219.14 and include the scope of the unit's activities, products, and services implementing the plan.

FSM 1922—Backcountry and Primitive Areas

This section establishes a reserved code for backcountry and primitive areas for issuances of an interim directive or field supplementation.

FSM 1923—Wilderness Evaluation

At FSM 1923, guidance is added on what areas should be subject to evaluation based on direction from the 1982 planning rule. Responsibilities are added for the forest, grassland, or prairie supervisor. Guidance is added on when a legislative environmental impact statement is required. Minor changes are made to text to agree with the 2005 planning rule.

FSM 1924—Wild and Scenic River Evaluation

At FSM 1924, policy is added to complete legislatively mandated studies within a specified study period and to clarify conditions under which previous river studies may need to be revisited. A responsibility is added for the Regional Forester to prepare legislative proposals for river proposals and one was added for forest, grassland, or prairie supervisor to approve management direction for rivers found eligible or recommended for designation.

FSM 1925—Management of Inventoried Roadless Areas

This section provides a cross-reference to another interim directive (id 1920–2004–1) on inventoried roadless areas, which became effective on July 16, 2004.

FSM 1926—Land Management Planning Using Planning Regulations in Effect Before November 9, 2000

Previous direction on FSM 1922 has been moved to FSM 1926. There are editorial changes from the previous text at FSM 1922 to be consistent with the 2005 planning rule. The caption is changed from ''Forest Planning'' to ''Land Management Planning Using Planning Regulations in Effect before November 9, 2000.''

Forest Service Handbook (FSH)

FSH 1909.12—Land Management Planning Handbook

The final directive to this handbook includes a change from a one-digit chapter coding scheme to a two-digit coding scheme; for example, chapter 2 becomes chapter 20. The current direction in chapters 1, 2, 3, 4, 5, and 6 is removed in its entirety and those chapters, with two-digit coding, are revised to be consistent with the 2005 planning rule at 36 CFR part 219. Chapter 80 (formerly chapter 8) and the zero code chapter contain changes to assure consistency with the 2005 planning rule.

Chapter 10—Land Management Plan

This chapter provides direction on what constitutes a plan and direction on consideration of individual resources. Section 11 describes: (1) Desired conditions, (2) guidelines, (3) identification of areas generally suitable for various uses, (4) guidance for special conditions (5) objectives, (6) proposed and possible actions, (7) plan consistency, and (8) special areas and documentation. Section 12 includes guidance on the monitoring questions,

performance measures. Section 13 includes guidance on consideration of various resources during the planning process, including air, water, fire, recreation, heritage resources, minerals, range, travel management, and land use.

Chapter 20—The Adaptive Planning Process

This chapter provides guidance on the adaptive planning process and includes procedural steps for amending and revising plans. Section 24 describes how to review and evaluate a plan and provides guidance on evaluation report content and format. Section 25 describes how to amend or revise a plan. Section 28 describes content for the approval document for plan development, plan amendment, or plan revision. Section 29 describes the application of plan direction to projects.

Chapter 30—Public Participation and Collaboration

This chapter provides guidance on public participation and collaboration.

Chapter 40—Science and Sustainability

This chapter provides guidance on science and sustainability. Section 41 provides direction on science reviews and discusses purposes of a review, levels of review, review strategy, and identification of reviewers. Section 42 describes social and economic sustainability and provides a framework for social and economic evaluation. Section 43 describes ecological sustainability and describes how to analyze ecosystem diversity and species diversity.

Ecosystem Diversity and Analysis

The steps in the ecosystem diversity analysis include:

a. Selecting the appropriate scales;

b. Identifying the characteristics of ecosystem diversity that will be the focus of the analysis;

c. Developing information on the range of variation;

d. Describing the current condition of the selected characteristics;

e. Describing the current condition and trend of the selected characteristics of ecosystem diversity;

f. Evaluating the status of ecosystem diversity;

g. Describing risks to selected characteristics of ecosystem diversity; and

h. Developing plan components for ecosystem diversity.

Species Diversity Analysis

The steps in the species diversity analysis include:

a. Establishing the ecosystem context for species;

b. Identifying listed species, species-of-concern, and species-of-interest;

c. Screening species-of-concern and species-of-interest for further consideration in the planning process;

d. Collecting information;

e. Identifying species groups/surrogate species for analysis and management; and

f. Developing additional plan components for species diversity if needed.

Section 43.22b provides guidance to responsible officials in identifying species-of-concern and species-of-interest. For instance, it states that the responsible official may identify species with ranks of G–1 through G–3 on the NatureServe ranking system as species-of-concern. Additionally, section 43.22c specifies how responsible officials may review species with the ranks of S–1, S–2, N1, or N2 on the NatureServe ranking system for potential species-of-interest. Species-of-interest may include hunted, fished, and other species identified cooperatively with state fish and wildlife agencies consistent with the Sikes Act.

Chapter 50—Objection Process

This chapter provides guidance for the pre-decisional objection process, including guidance on: computation of periods, evidence of timely filing, lead objector, dismissal of objections, timeframes for resolving objections, response of reviewing officials, and maintaining records.

Chapter 60—Forest Vegetation Resource Planning

This chapter adds guidance on timber and forest vegetation resource planning, including guidance on identifying lands generally suitable for timber production, suitability determinations at the project level, and long-term sustained-yield capacity.

Chapter 80—Wild and Scenic River Evaluation

This chapter revises terminology, such as the term ''study report'' to ''study report/applicable NEPA document'' and updates terminology, such as, ''management prescriptions'' to ''management direction,'' and so forth. In addition, chapter 80 provides more explicit guidance for the Wild and Scenic Rivers (WSRs) study process that is consistent with a November 21, 1996, memorandum to Regional Foresters from the Directors, Ecosystem Management Coordination and Recreation, Heritage, and Wilderness Resources Staffs, Washington Office, with the U.S. Department of Agriculture-U.S. Department of the Interior Guidelines, and with the river study direction of other Federal agencies. These changes strengthen and reinforce the linkage of the river study process to land management planning.

Regulatory Certifications

Environmental Impact

These final directives provide the detailed direction to agency employees necessary to carry out the provisions of the final 2005 planning rule adopted at 36 CFR part 219 governing land management planning. Section 31.12 of FSH 1909.15 (57 FR 43208; Sept. 18, 1992,) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that these final directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

Regulatory Impact

These directives have been reviewed under USDA procedures. The final directives would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. The directives would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, the directives would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, the directives have been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that these final directives will not have a significant economic impact on a substantial number of small entities as defined by the act.

No Takings Implications

These final directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12360, Governmental Actions and Interference with

Constitutionally Protected Property Rights, and it has been determined that they would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

These final directives have been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that they do not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

These final directives have been reviewed under Executive Order 12988, Civil Justice Reform. These final directives will direct the work of Forest Service employees and are not intended to preempt any state and local laws and regulations that might be in conflict or that would impede full implementation of these directives. The directives would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the effects of these final directives on state, local, and tribal governments, and on the private sector have been assessed and do not compel the expenditure of $100 million or more by any state, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The agency has considered these final directives under the requirements of Executive Order 13132, Federalism. The agency has made a assessment that the final directives conform with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the states; and would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Moreover, these final directives address the land management planning process on national forests, grasslands, or other units of the National Forest System, which do not directly affect the states.

Consultation and Coordination With Indian Tribal Governments

These final directives do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore, advance consultation with tribes is not required.

Controlling Paperwork Burdens on the Public

These final directives do not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and implementing regulations at 5 CFR part 1320 do not apply.

Conclusion

These final directives provide consistent interpretation of the 2005 planning rule for line and staff officers, and interdisciplinary teams. As a consequence, the agency can fulfill its commitment to improve public involvement and decisionmaking associated 1 with developing, amending, or revising a land management plan. The Forest Service has developed these planning directives to set forth the legal authorities, objectives, policy, responsibilities, direction, and overall guidance needed by Forest Service line officers, agency employees, and others to use the 2005 planning rule.

The full text of these manual and handbook references are available on the World Wide Web at *http://www.fs.fed.us.directives.* Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at *http://www.fs.fed.us.*

Dated: January 10, 2006.

Dale N. Bosworth,

Chief.

[FR Doc. 06–804 Filed 1–30–06; 8:45 am]

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Federal Register

Vol. 71, No. 20

Tuesday, January 31, 2006

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Non-Federal funds or soft money and coordinated and independent expenditures; agent definition; published 1-31-06

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Superbowl XL, Detroit River, MI; published 1-30-06

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Iowa; published 1-31-06

LEGAL SERVICES CORPORATION

Legal assistance eligibility; maxium income guidelines; published 1-31-06

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Engine Components Inc. (ECI); published 12-27-05

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West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 2-6-06; published 12-7-05 [FR 05-23735]

Pacific Fishery Management Council; meetings; comments due by 2-8-06; published 11-21-05 [FR 05-22992]

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Carbon, alloy, and armor steel plate restriction; comments due by 2-7-06; published 12-9-05 [FR 05-23723]

Required sources of supply; comments due by 2-7-06; published 12-9-05 [FR 05-23724]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4340/P.L. 109–169

United States-Bahrain Free Trade Agreement Implementation Act (Jan. 11, 2006; 119 Stat. 3581)

Last List January 12, 2006

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